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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~330~~ 64

HERMAN R. BALTZER AND WILLIAM G. TAAKS, APPELLANTS,

vs.

THE RALEIGH AND AUGUSTA AIR LINE RAILROAD COMPANY; THE RALEIGH AND GASTON RAILROAD COMPANY; JOHN F. PICKRELL, JOHN D. WHITFORD, AND WILLIAM J. HAWKINS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NORTH CAROLINA.

FILED OCTOBER 9, 1882.

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1 United States Circuit Court for the Western District of North Carolina.

BALTZER & TAAKS
vs.
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

In the Circuit Court of the United States for the Western District of North Carolina, at Greensboro.

Be it remembered that on the eighteenth day of October, 1878, at 10 a. m., the following bill of complaint and exhibits were filed in said court, to wit:

HERMANN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, The Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, Defendants. } In Equity.

To the honorable the judges of the circuit court of the United States for the western district of North Carolina:

Your orators, Hermann R. Baltzer and William G. Taaks, who are citizens of the State of New York, bring this their bill of complaint against the defendants, The Raleigh & Augusta Air-Line Railroad Company, The Raleigh & Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, who are citizens of the State of North Carolina, praying for equitable relief. And, complaining, your orators say:

I. That at the time hereinafter named your orators were doing business as bankers and negotiators of securities in the city of New York.

2 II. That the defendant, The Raleigh & Augusta Air-Line Railroad Company, formerly known as the Chatham Railroad Company, is a body corporate created and existing under and by virtue of the laws of the State of North Carolina, which, for convenience, will hereafter be called the company defendant, was, in the year 1868, the owner of an unfinished railroad or franchise authorizing the construction of a railroad extending from the city of Raleigh southward to the South Carolina State line, and of which company the defendant, Wm. J. Hawkins, was president.

III. That on or about the 15th day of August, A. D. 1868, the Legislature of the State of North Carolina enacted a law authorizing the delivery and exchange of the bonds of said State to the amount of ten thousand bonds of the par value of one thousand dollars each in exchange for the bonds of the said company defendant, of like amount, denomination, and tenor, the said company bonds to be secured by the execution of a mortgage to the State, as in said law is provided, which, for greater certainty, is prayed to be referred to as part of this complaint.

IV. That pursuant to the authority so given to the said company the defendant, Wm. J. Hawkins, its president, together with the defendant, John D. Whitford, in anticipation of the receipt of said State bonds in exchange for said company's bonds, visited the city of New York previous to the first day of September, 1868, and, through the defendant, John F. Pickrell, sought to utilize the said State bonds, not yet issued, in the purchase for said company of ten thousand tons of iron rails. That the said Pickrell and Whitford who were and acted as the agents of said company, under the direction of its president, the said Hawkins, proposed to purchase said iron from a firm then doing business in said city of New York under the name and style of Schelpler & Co.; that said Schelpler & Co., not being able themselves to purchase and handle so large a quantity of iron as ten thousand tons, applied to your orators to take charge of and
3 advance the means and conduct the said negotiation, and to advise your orators of the real character of said transaction introduced to your orators, as the agent of the said company, the defendant, John F. Pickrell, and the said Pickrell soon thereafter introduced to your orators the defendant, John D. Whiteford, both of whom were presented to your orators as the agents of said company, and were so acknowledged to be by its president, the defendant Hawkins, who acted in co-operation with them in the negotiation for the purchase of said iron. That said defendants, so acting in behalf of said company, and with the knowledge of its president, the said Hawkins, proposed to purchase said 10,000 tons of iron rails for said company, to be paid for out of the proceeds of said North Carolina State bonds, and proposed that said bonds should be pledged as security for the payment for said iron, in some manner to be agreed upon, until sold in the market, when the proceeds thereof, or so much as should be necessary, should be applied to the payment for said iron.

VI. That said Pickrell and Whitford, so acting for said company under the direction of its president, said Hawkins, stated to your orators that the proposed contract for the purchase of said iron, if executed, might be done either in the name of said company defendant, or on its behalf and for its use, in the names of its said agents, Pickrell and Whitford, or either of them, at the option and election of your orators; that said contract, executed in either way, or in the name of either party, for the sale and purchase of said iron would be for the defendant company, for whose use alone said iron was to be purchased, and whose franchise and assets or moneys would be responsible for and charged with the payment for said iron.

VII. That your orators, having confidence in the good faith and integrity of said company as represented by its agents, said Pickrell and Whitford, acting under its direction by said Hawkins, agreed to unite with said Schepler & Co., and to supply the said company defendant with said 10,000 tons of iron rails at the agreed price per ton in the said contract hereinafter mentioned.

4 VIII. That, having agreed to furnish said company with said iron upon the security of the bonds of the said State of

North Carolina so to be issued, a protocol of an agreement was drawn up under the dictation of the said Pickrell and Whitford, representing said company, and your orators, representing and acting for themselves, and suspecting no fraud or deception being intended on the part of said company, and in view of the fact that its agents, said Pickrell and Whitford, then resided in the city of New York, your orators felt they would be secure in accepting the names of said agents in the execution of said contract on the part of and in behalf of said company, but in no manner to limit or diminish said company's responsibility in the use of the name of its said agents, or to accept their credit or responsibility in lieu of said company; that, acting upon this understanding and object of the parties a *projet* of an agreement was written, preparatory to execution in that form, but which was not to be signed till seen and reviewed by the president of said company, the said Hawkins, for which purpose delay was asked by and granted to said agents, Pickrell and Whitford.

IX. That said agents soon thereafter advised your orators that they had submitted the said agreement to said Hawkins, as the president of said company defendant, who directed and requested various alterations thereto, which, under the dictation of said Hawkins and Whitford, were by the said Pickrell interlined in pencil; that, among other emendations and alterations, the said Hawkins desired and requested that the name of said agent Whitford be stricken out as a party to the contract, and that the agreement be executed in the name of said Pickrell alone, which he said would, to all intents and purposes, be as binding on said company as if signed by both Pickrell and Whitford, or the said company itself, which was the real party to the contract, and for whose use and benefit alone said iron was being purchased as aforesaid.

X. That your orators, still not suspecting that any deception or fraud was intended on the part of the defendants, or any of them, agreed to the modification so proposed and requested by the defendant company through its president, the said Hawkins, whereon the said agreement, so modified and amended, was copied and signed by the parties deemed material on the 11th day of September, A. D. 1868, which said agreement is prayed to be taken as part of this bill, marked "Exhibit A."

XI. That at the same time, to wit, on the said 11th day of September, A. D. 1868, when the said Schedule "A" was executed in the manner and for the purpose aforesaid, it was proposed and agreed that another paper should be executed by the said company, through its president, of even date with, and to form a part of, said agreement, Schedule "A," which said last-named paper is made part of this bill, marked Exhibit "B."

XII. That treating said two papers (Exhibits A and B) as one agreement, executed for one purpose on the part of said company, as they, in fact, were, the same were signed in duplicate, one of which duplicates was retained by said company, and the other was delivered to your orators, no copy being delivered to either said Pickrell or Schepeler & Co., who merely signed the said Schedule "A" as intermediators and negotiators between the parties, and who,

as far as said Pickrell was an apparent party, had not incurred, and was not to incur, any liability whatever, the same being wholly the contracting and undertaking of the defendant company; and your orators, having, in good faith, accepted the said contract, so made, bound themselves to deliver to defendant company, through its agent Pickrell, the said 10,000 tons of iron rails, for the construction of the road of said company as aforesaid.

XIII. Your orators further state that, in the making of said contract, it was not the purpose or intention of your orators to purchase said bonds or accept the same absolutely in payment of said iron, but merely to receive the same as a security upon which your orators were to have a lien for the payment of said iron, as was
6 mutually understood and agreed between the parties, and because of which agreement the defendant company's agents and president reserved the right and option to deliver said bonds to your orators at all, but, on the contrary, to keep or sell the same at their convenience, and to apply the proceeds thereof to the payment for said iron; and that, on the part of your orators, it was also provided, in the sixth section of said agreement, that the said bonds were, in fact, but a pledge to secure the payment for said iron, and that if, from any cause or at any time, the said bonds failed to produce a fund sufficient to pay for said iron, your orators were, nevertheless, to be paid for the same in money, at the price and upon the terms provided in said agreement.

XIV. That when the said agreement was made, between your orators and the said company defendant, the bonds so to be pledged for the payment for said iron had in fact not been issued as aforesaid, and were consequently not present, seen, or inspected by your orators, who depended entirely upon the truth of the statements and representations of the said defendant company's agents, the said Pickrell, Whitford, and Hawkins, who jointly and severally most solemnly assured your orators that the said bonds so to be pledged as security for said iron were to be valid obligations of the State of North Carolina, authorized by the organic and statutory laws of said State, duly passed and enacted, and that the interest on said bonds would at all times be provided for and paid by said State, by virtue of existing and sufficient statutory provisions in that behalf enacted; that your orators, putting implicit faith in the representations so made by the defendant company's agents, the said Hawkins, Whitford, and Pickrell, agreed to accept said bonds in pledge as security for said iron as aforesaid.

XV. And your orators further state that they were advised by the agents of said company defendant that before it could get possession of said State bonds that said company was required to exe-
7 cute its own bonds, to an equal amount of said State bonds secured by a first mortgage lien on its franchises, property, and estate, executed to the State of North Carolina, and to deliver its said bonds so executed and secured to the public treasurer of said State of North Carolina, and which should also operate and stand pledged in the hands of said State as a further and additional security for said State bonds, as a fund which the said State could

use to protect its own bonds so to be delivered to, and pledged with, your orators as security for said iron.

XVI. That although your orators had no opportunity to see or inspect said State bonds, or to be advised of their real character, the same not having yet been issued or in actual existence, but relying implicitly upon the truth and good faith of the assurances, representations, and statements made by said Hawkins, Whitford, and Pickrell, the agents of defendant company, your orators at once proceeded to purchase and deliver said iron, and in about thirty days thereafter, to wit, on or about the 12th day of October, 1868, delivered 630 tons of said iron to the defendant company, through its agent, John F. Pickrell, which, at the price agreed upon, amounted to about $50,023.51, but the defendant company not yet having said bonds ready for delivery, paid for the same in cash, as provided in said agreement, as will be shown unto this honorable court.

XVII. That while your orators were thus in good faith performing their part of said agreement the said defendant company, through its agents, the said Hawkins, Whitford, and Pickrell, were procuring the issue and delivery of the said State bonds to said company, in exchange for said company's bonds which had not been done as aforesaid. To that end, and pursuant to said act and statutory agreement between the said State and said company, and in conformity to the spirit and intention of the agreement between said company and your orator, the said company did, to wit, on the 21st day of September, A. D. 1868, execute and deliver to the
8 public treasurer of the State of North Carolina the first mortgage bonds of said company to the number of 2,000 bonds, of the par value of $1,000 each, secured by a first mortgage executed and signed by said Hawkins, to said State, which said bonds so executed were dated, and to take effect from and after the 1st day of October, A. D. 1868, as will better and more fully appear by said mortgage, a certified copy of which is made part hereof, marked "Exhibit C."

XVIII. That said State bonds were not, as your orators were advised and believe, ready for delivery to said company in exchange for its bonds, till about the 11th day of November, A. D. 1868, so that when, on the 2d day of November, 1868, your orators tendered three deliveries of iron on that day the said State bonds were not yet in possession of said company, your orators still acting upon the good faith of the assurances and representations of its agents, the said Hawkins, Whitford, and Pickrell, made in behalf of said company as aforesaid.

XIX. That the deliveries of iron so tendered on the said 2d day of November, A. D. 1868, were numbered two (2), three (3), and four (4), respectively.

That delivery No. 2 was for about 770 tons, and amounting, at the agreed price, to about $61,132.14.

That delivery No. 3 was for about 330 tons, amounting, at the agreed price, to about $26,254.32.

That delivery No. 4 was for about 1,004 tons, amounting, at the agreed price, to about $79,713.79.

Thus making a total delivery by your orators to said company, under their agreement aforesaid, on the 2d day of November, A. D. 1868, of about 2,104 tons, and amounting to about $167,097.73.

XX. That though your orators were thus prompt in making said 2d, 3d, and 4th deliveries on the said day of November, A. D. 1868, the said defendant company, as stated, not yet ready with its bonds or money, to pledge or pay for said iron, and kept your orators, waiting with said iron on hand, until about the 21st day of
9 November, 1868, when, and not until when, the said company defendant, through its said agents, paid to your orators the sum of $73,483.10 in cash, and delivered to your orators at or about that time 150 of said North Carolina State bonds, of the par value of 1,000 dollars each, in pledge, as security for the balance due on said three deliveries, to wit, the sum of about $93,615.57, and which was about the first time your orators had seen or inspected any of said State bonds, which they perceived in some respects different from the character of the State bonds your orators expected to receive, and especially in the fact that there was no evidence expressed on the face thereof of the authorization of a tax to be levied for the payment of the interest or principal of the same. But as your orators only received said bonds as security for the payment for said iron, with the covenanted right of your orators to be paid for their said iron in cash, if, for any reason, the said bonds at any time should not be worth in the market an amount sufficient to pay for said iron at the price agreed upon, your orators were to be paid for the same in cash, as specially provided in the 6th clause of said agreement Exhibit "A."

XXI. Your orators further state that, not suspecting any deception, wrong, or fraud about said bonds, and relying upon the good faith of said company defendant, accepted said bonds as security, and delivered said company said iron; but your orators state the fact to be that before said bonds had been 20 days in their possession they were publicly declared to be fraudulent and void as procured by corrupt legislation, and issued in violation of the constitution of the State of North Carolina, which at once caused said bonds to be excluded from all recognition in the markets of New York or elsewhere as valid or lawful securities, and were for these reasons excluded from the New York Stock Exchange, which at once rendered said bonds wholly and absolutely worthless as a security for any purpose; whereupon your orator at once notified said company defendant to take up its said bonds so held as security by your orators, and demanded payment to your orators of said sum of
10 about 93,615.57 dollars, then due to them on said deliveries Nos. 2, 3, and 4 of said iron, not then laid upon the railroad of said company defendant.

XXII. Further complaining, your orators state that when the said bonds were thus declared fraudulent and void, and your orators so notified the said company defendant, their said agents, Hawkins, Whitford, and Pickrell, to take back said 150 bonds so pledged, and to pay for said iron, that the said company in no manner, through either of its said agents, denied or disputed the right of your

orators to have and receive payment in cash for their said iron, as provided in the sixth section of said agreement, because of the happening of the contingency therein mentioned, to wit, that said bonds had ceased to be of any value or sufficient to furnish a fund, or any part of a fund, for the payment of said iron, but on the contrary admitted the rights of your orators to be paid for said iron, and asked for indulgence as to time, giving assurances that the said State bonds would, by further legislative action, be made good and valid securities, and by such assurances, solicitations, and promises kept your orators in suspense for a long time in the performance of their contract till it became manifest that said company had not, and was not likely to have, any means for fulfilling said agreement for the purchase of said 10,000 tons of said iron, when your orators, as a matter of favor to defendant company, released it from a further performance of its said contract, to the great detriment and loss of your orators, as the price of iron rails was steadily declining in the market, thereby constantly decreasing the profits of your orators, your orators at the time being assured, however, that the said sum due your orators, to wit, 93,615.57 dollars, as balance on said 2d, 3d, and 4th deliveries, would soon be paid by defendant company aforesaid.

XXIII. That your orators, putting faith in the promises so given, patiently waited until about December, A. D. 1872, when, in self-defence and in protection of their rights, they were compelled to employ counsel and bring suit, which they did, against said
11 company defendant, on the common law side of the docket of this honorable court, on or about the 24th day of December, A. D. 1872, to which said proceedings your orators beg to refer from time to time, and treat as part of their bill for the purpose of this suit

XXIV. That on or about the 19th day of February, A. D. 1874, the said defendant company appeared and answered your orators' complaint, when, to the great and utter surprise of your orators, the said company falsely and fraudulently denied its obligations to pay your orators for said iron, and denied that the said Pickrell and Whitford, or either of them, were at any time the agents of said company, and denied that either said Hawkins, Whitford, or Pickrell had authority to bind said defendant in the making of said contract; that the said defendant was in no manner bound thereby, or was a party to said agreement, Schedule "A," and falsely assumed and pretended that your orator dealt with John F. Pickrell individually, or John F. Pickrell & Co., a pretended firm, composed of Greenleaf, Norris & Co., and Charles Gould, of the city of New York, and so declared before this honorable court upon the oath of said Hawkins and Whitford, well knowing that in point of fact that no such firm as John F. Pickrell & Co., composed of Greenleaf, Norris & Charles Gould, ever existed, and otherwise falsely and fraudulently evaded and denied the rights of your orators with a view of cheating and defrauding your orators out of the large amount of money due them in the purchase of said iron then in possession and use of defendant company aforesaid.

XXV. That subsequent to the filing of the said false and fraudulent answer, to wit, on or about the 5th day of February, 1877, the said company defendant, by leave, filed an amended answer, setting up pleading and relying upon the statute of limitations, thereby seeking to destroy absolutely the rights of your orators without a hearing upon the merits of their cause, but which said plea this honorable court, upon motion, disallowed, as will more fully appear by reference to the common lawsuit and proceedings had therein.

12 XXVI. Further complaing, your orators state that at the present term of this honorable court, to wit, on the 14th day of October, A. D. 1878, your orators said common lawsuit came on to be heard before this honorable court with a jury, when your orators proceeded to try their cause, and among other things offered to prove the facts as to the execution of said agreement of the 11th of September, A. D. 1868, between your orators and said company defendant, and to show how and in what manner said agreement was executed as herein alleged, and to show that said agreement, instead of being signed by said company, as intended, was, by the procurement and representation of its agents, signed by said John F. Pickrell for its use and benefit, and was in fact the contract and undertaking of said company as the real and only beneficial party thereto, and that the said John F. Pickrell, whose name was used, had no beneficial interest therein, and was not to incur any responsibility or obligation to your orators in signing the same, but that his name was used as a substitute for the name of said company at its procurement and request; and that said company which alone received and used said iron through the procurement of its said agents, said Hawkins, Whitford, and Pickrell, was responsible to your orators therefor. And your orators further offered to prove and show that the agents of said company, said Hawkins and Whitford, had, by deception and false pretence, for the purpose of covering up certain fraudulent peculations and profits which the said Whitford and Hawkins were secretly designing to conduct and secure, under the cover of the name of said Pickrell, had conspired together, but without the knowledge of said Pickrell of their fraudulent intent and schemes to use his name in the making of said contract with your orators, and which signature and name of said Pickrell so used and imposed upon your orators in the signing the said contracts in Schedules "A" and "B," in the manner and for the purposes herein set forth; and also to prove that the property, money, and credit of your orators were procured and used by said company in the purchase

13 and delivery of said iron by the combination, conspiracy, and deceit of its agents, said Hawkins and Whitford, as aforesaid, all of which matters and facts, among others, your orators were then and there ready to prove before this honorable court and said jury at said trial at law then so pending.

XXVII. That, in consequence of said false and fraudulent answer so made by said defendant company, and in consequence of the inflexible rules of the common law procedure, which were relied upon and interposed by the defendant company, your orators were

and are denied the right to introduce their proofs by parol, sustained by documentary evidence then and there present, to show to this honorable court and said jury the facts as to the signing and accepting of said contract in the name of said Pickrell alone, when, in truth and in fact, the signing of said contract was the act and obligation of said corporation defendant for all beneficial purposes, and the further fact that the said Whitford and Hawkins, the agents and fiduciaries of the said company, so conspiring together to use the name of said Pickrell to deceive, mislead, cheat, and defraud your orators in the execution of said contract as aforesaid; all of which proof was objected to by the defendant on trial, and excluded by the court, because of the form of said written agreement; whereupon your orators were compelled to ask the favor of this honorable court to withdraw a juror, and to submit to the payment of costs, with leave to amend your orators' complaint, which can only be done effectively by an appeal to the equitable relief of this honorable court, where your orators can be heard upon the real facts and merits of their rights in the premises, whereby said contract, Exhibits "A and B," may be reformed so as to stand and be read in the proper name and style of the corporation defendant, the said Raleigh & Augusta Air-Line Railroad Company, as the real party thereto and maker thereof, instead of said Pickrell, whose name was intended to represent said company, and who, in truth and in fact, has not, and never had, any interest therein, and was not to assume any responsibility therefor, but that the same was, to all intents and pur-
11 poses, a contract for and to be performed by said company defendant, but that the said proof cannot be admitted without the aid of a court of equity.

XXVIII. And, further complaining, your orators state that they have recently been advised, and so believe and charge the facts to be, that said Whitford and Hawkins, with a view of cheating and defrauding your orators, while acting as the agents of said company, erased the name of said Whitford from said agreement, Exhibit "A," when the same was being prepared for signature, as hereinbefore stated, and used the name of said Pickrell alone, so as to form a secret scheme and organization, which they, at their convenience, could call John F. Pickrell & Co., and thereby falsely pretend and represent that said firm was composed of said Charles Gould, Greenleaf, Norris & Co., as hereinbefore stated, and further pretend that said firm had obligated themselves to build and construct the railroad of defendant company, and furnish all the iron, material, and equipment therefor.

XXIX. And your orators further state that the said company defendant, further seeking to profit by the fraudulent schemes, conspiracies, and purposes of its agents, said Hawkins and Whitford, and under their direction and procurement, did execute a further pretended contract in the name of said John F. Pickrell & Co., dated the 6th day of March, A. D. 1869, a copy of which is made part hereof, marked Exhibit "D," but your orators are advised, and so state and charge, that in truth and in fact the said Hawkins and Whitford then well knew that there was no such firm as John F.

Pickrell & Co., and that the name of said Pickrell was used to cover up the fraudulent purposes of said Hawkins and Whitford, who were themselves the parties secretly constituting the pretended parties under the "Co." added to the name of said Pickrell, when said last-named agreement was fabricated by said Hawkins and Whitford, while acting as the agents of said company defendant, and who procured and used the iron furnished by your orators in the manner and for the purposes aforesaid.

15 XXX. Your orators further state, upon information and belief, that under the name of the assumed and pretended firm of John F. Pickrell & Co. profits exceeding 100,000 dollars were made and realized by said Hawkins and Whitford, as the secret contractors for building and constructing the railroad of said company defendant; that the vouchers for the drawing of said money under said pretended contract were made out in the name of John F. Pickrell & Co. for the purpose of concealing the fraudulent character of said transactions, they, the said Hawkins and Whitford, being at time the agents and fiduciaries of said company defendant, and using the unpaid-for iron purchased of your orators to enhance their profits and gains under cover of said pretended firm of John F. Pickrell & Co.

XXXI. Your orators, upon information and belief, further state and charge that when said Hawkins and Whitford so conspired together to use the name of said pretended firm of John F. Pickrell & Co., they well knew that there never was such a firm as aforesaid; that said Pickrell, neither himself nor by any one else, either as an individual or as a firm, ever had agreed or undertaken to build said company defendant's road, or any portion thereof; that said Pickrell never had done or caused to be done a day's work on said road, and never had hired any one else to do or cause to be done any work on said company's road, and did not know and never had corresponded with the engineer in charge of the work on said road, or any one engaged therewith, except said Hawkins and Whitford, who fraudulently used the name of said Pickrell for collusive and illegal purposes, and getting possession of and appropriating the money lawfully belonging to said company, which should have been paid to your orators for the iron they had delivered to said company, under the procurement, promises, and assurances of its agents and its representatives, the said Whitford and Hawkins, as aforesaid.

XXXII. Your orators, further complaining, upon information and belief, state and charge the facts to be that at the
16 time the said State bonds were so declared to be fraudulent and void, to wit, on or about the 3d day of December, A. D. 1868, that said defendant company had ample funds in the hands of its agent, said Pickrell, to have paid your orators what was due them on the purchase of said iron derived from the proceeds and sales of the said State bonds which should have been delivered or paid over to your orators; but that instead thereof, as soon, or about the time said State bonds were declared fraudulent and expelled from market in New York, the said defendant company, acting

through its president, said Hawkins, directed the said Pickrell to turn over to John D. Whitford, agent of said company, all the funds in his hands, and that, in obedience to said directions, the said Pickrell did, on or about the 3d day of December, A. D. 1868, transfer from his name on the books of Greenleaf, Norris & Co., to the name of "John D. Whitford, agent" of said company, the large amount and sum of $386,475.92, a portion of which justly belonged to your orators, and which transfer, your orators are advised and believe, was so hastily made to prevent your orators and others who had been defrauded in the use of said void and valueless bonds from pursuing and attaching said money so standing in the name of said John F. Pickrell, the nominal contracting party on behalf of said defendant company. And your orators are further advised, and so charge, that the said large sum of money so accumulated from the aforesaid State bonds was invested in buying United States bonds, which were laid away for the convenience and use of said Hawkins and Whitford in the constructing of the road of said defendant company at a future day for their own profit and benefit.

XXXIII. Your orators, further complaining, state that they have recently been advised, and so charge the facts to be, that at the time said Whitford and Hawkins, as agents of said company, assured your orators that said State bonds mentioned in their said agreement with your orators were good and valid securities, that they did so in bad faith, with a fraudulent intent of misleading and deceiving
17 your orators, and did not believe their statements to be true, but, on the contrary, that said Hawkins and Whitford knew the same to be false, and did not believe said bonds to be good and valid, but believed the same to be fraudulent and void, and would soon prove to be so, and cease to be salable in the market, and so believing, urged the said Pickrell to be expeditious in trading away and disposing of said bonds, and to transfer the proceeds, as above stated.

XXXIV. Your orator, further complaining, states that in the execution of said agreement on the 11th day of September, A. D. 1868, wherein your orators agreed to furnish and deliver said 10,000 tons of said iron upon the security of said bonds then not issued to or received by said company, that said company and its agents, said Hawkins, Whitford, and Pickrell, each and all, became the trustees of your orators in the execution of said agreement, and were bound to protect the rights of your orators in the premises, and that being so impressed with the duties of said trust were in justice and duty bound after said State bonds so pledged with your orators proved to be fraudulent and void as aforesaid, and were by said company and its said agents exchanged back to the State of North Carolina for said company's bonds that said defendants should have included and returned said 150 bonds of said State so pledged with your orators, and to have delivered to your orators the equivalent thereof, to wit, 150 of said company's bonds to have been held in the place of said State bonds, or should have notified your orators of such intended exchange and afforded them an opportunity to be present

and exchange the bonds so pledged with them, and thus, as far as possible, protected their rights in the premises.

XXXV. But your orators, further complaining upon information and belief, state and charge the facts to be that said company and its agents, taking advantage of the ignorance of your orators and their absence from the place of said exchange, only delivered back 1,850 of said repudiated and void State bonds, receiving therefor a like number of said company's bonds, but instead of notifying your orators and affording them an opportunity to bring forward and exchange their 150 bonds so pledged to and held by your orators, went into market and purchased other worthless and repudiated bonds of the State of North Carolina, paying therefor but a merely nominal and trifling consideration, and then in fraud of the rights of your orators and in disregard of the duties imposed upon said company and its agents as the trustees of your orators in the conducting the exchange of the said bonds as aforesaid and acting under color of law procured by said company's agents for such purpose, delivered over said other worthless and cheaply-purchased bonds of the State of North Carolina to the number of 150, and fraudulently got possession of said 150 company's bonds which properly represented the said 150 State bonds so pledged to and now held by your orators as aforesaid.

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XXXVI. Further complaining, your orators state, upon information and belief, that the Raleigh & Gaston Railroad Company, the said Chatham Railroad Company, and the defendant, the said Raleigh & Augusta Air-Line Railroad Company, at all times were and now are owned, worked, operated, and handled by the same officers and directors, and were so worked and handled when the said State bonds were so delivered to and pledged to your orators and exchanged back for said company's bonds to the amount of 1,850, and fraudulently excluding the said 120 State bonds so held by your orators as aforesaid; that when said fraudulent exchange of said bonds was made the said two companies conspired together, and with said Hawkins, Whitford, and others, and transferred said company's bonds or other bonds for that purpose created to the said Raleigh & Gaston Company, who now pretend to hold the same as a lien on the said Raleigh & Augusta Air-Line Company to the exclusion of the prior liens and equities of your orators, but your orators state and charge the fact to be that the said Raleigh & Gaston Company and all others dealing with them in reference to said bonds had notice of the rights of your orators in the premises should be restrained, and enjoined from interfering with the prior rights of your orators, as will be hereinafter prayed.

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XXXVII. And further complaining your orators upon information and belief, state that the said Raleigh & Augusta Air-Line Railroad Company and the said Hawkins, Whitford and others, to your orators unknown, have conspired together to put a lien or liens, by mortgage or otherwise, upon the franchise, property, and estate of said company, with the view and intention of further destroying the rights of your orators, and that persons connected with said company, officially and otherwise, have repeatedly declared that should

your orators obtain judgment in this honorable court, that the same would be worthless and of no value to your orators, which fraudulent proceedings should of right be restrained by the order and decree of this honorable court, as hereinafter prayed.

XXXVIII. Your orators further state that they are advised and believe that said Raleigh & Gaston Railroad Company, together with said Hawkins, Whitford and others, are in receipt of the earnings and income of said Raleigh & Augusta Air-Line Railroad Company, which of right should be appropriated to paying and discharging the debt due to your orators for the purchase of said iron, but which earnings and income the said defendants, or some of them, are using and appropriating to their own benefit and purposes, in fraud of the rights of your orators, which should be enjoined and restrained by the order of this honorable court, as hereinafter prayed.

XXXIX. Your orators are advised, and charge the fact to be, that the said bonds of the State of North Carolina so pledged with your orators in said contract for the purchase of said iron, under and by virtue of said statute, have been adjudged to be in violation of the constitution of said State, and are and were utterly null and void, and constitute no good and valid consideration on the part of said company or its agents in the making of said agreement, on the part of said company, for the purchase of said iron so fraudulently procured from your orators as aforesaid, and in no manner did or could pay or discharge the debt of said company to your orators, or constitute a payment for the same in any respect whatever.

XL. Your orators, further complaining, state upon information and belief, and so charge the fact to be, that your orators were designedly imposed upon and defrauded in the manner of making said agreements, Exhibits "A" and "B;" that the portion of said agreement marked Exhibit "A," when executed on the 11th day of September, A. D. 1868, entitle your orators to receive, and only to receive, the bonds authorized to be issued and exchanged within the scope of said act, entitled "An act to amend the charter of the Chatham Railroad Company," "ratified the 15th day of August, 1868," which limited an issue in exchange of bonds to the amount of two million of dollars only, that is to say, the State of North Carolina, by the terms of said law, could issue 2,000 bonds of the par value of 1,000 dollars each, and no more, and which said bonds could be numbered from No. 1 to 2000, inclusive, and no more; that any bond numbered above 2000 would be in excess of the limitation of said law, as by reference thereto will more fully appear, and that under and by virtue of said law, and the portion of said contract Exhibit "A," your orators were entitled to receive in pledge from said defendant company bonds so limited and numbered, and that such were their rights when the protocol aforesaid, including interlineations, of the president of defendant company was copied and signed by the parties.

But your orators state the fact to be that when it was proposed and agreed the said company should execute said supplementary

agreement Exhibit "B," which was signed by its president, said Hawkins, of even date with Exhibit "A," the said company, by its president, took advantage of the ignorance of your orators without their knowing or having reason to suspect his motives, and imposed upon your orators the acceptance of bonds of higher number
21 than was authorized by law, to wit, bonds ranging as high as number 3000, as by reference to the portion of said agreement, Exhibit "B," will more fully appear.

XLI. And your orators, further complaining, state that when said 150 bonds were delivered to and pledged with your orators as security for said deliveries Nos. 2, 3, and 4, to wit, on or about the 21st day of November, A. D. 1868, that said company, through its said agents, Hawkins, Whitford, and Pickrell, further taking advantage of the ignorance of your orators, and with a view of further cheating and defrauding them, delivered to and pledged to them as security for the said sum of 93,615.57 dollars, bonds numbered from 2751 to 2850, and from 2951 to 3000, inclusive, which were wholly and entirely in excess of the bonds authorized and limited by the said act of the 15th day of August, A. D. 1868, and which the said company and its agents well knew were unauthorized by law, and the constitutionality and legality of the same would be questioned, and the invalidity of said bonds declared and established, which speedily followed as aforesaid.

XLII. Your orators further state that they are the just and lawful creditors of the said Raleigh & Augusta Air-Line Railroad Company in the sum of 893,615.57, with interest thereon since the 2d day of November, A. D. 1868, amounting to about $149,785.17, contracted for the iron so purchased and now used on the road of said company, and for which sum your orators in equity and good conscience are entitled to a decree and judgment against said company, its property and estate, your orators here bringing into court and placing subject to its order the said 150 worthless and void bonds so imposed upon your orators as aforesaid by the said company and its agents.

XLIII. Your orators, further complaining, are advised, and so charge and state the fact to be, that the defendant, the said Raleigh & Augusta Air-Line Railroad Company, is insolvent, and not able to meet and discharge the obligations and incumbrances im-
22 posed upon it by its agents, said Hawkins and others, since the 11th day of September, A. D. 1868, and of right should be placed in the hands of a receiver for the protection of the rights of your orators in the premises.

XLIV. Your orators are further advised and state, and charge the fact to be, that as between your orators and said defendants, and each and every of them, that your orators are entitled to the protection and benefit of each and every element of security that was created or constituted part of the creating and issuing of said bonds of the State of North Carolina and said company, and especially to the company's bonds; and the said mortgage of the 21st day of September, 1868, executed to the State of North Carolina as indemnity and security for the said State bonds so delivered to and pledged to

your orators as security for the iron so sold and delivered to said company, and that the said State was not in fact authorized to deliver to said company its said 150 bonds, or its bonds, without reserving a sufficient number to take up and indemnify your orators for the said 150 State bonds pledged to and held by them as aforesaid, and that said State nor the defendants had any right to cancel or agree to or accept the cancellation of the said mortgage, nor to agree to deliver nor to accept the delivery of the said bonds without the consent of your orators and indemnifying and paying them as aforesaid, and that said mortgage remains in full force and effect so far as the rights of your orators are concerned, and that 150 of said company's bonds are outstanding and unpaid in equity and good conscience as will hereinafter be prayed.

Wherefore, the premises considered, and inasmuch as your orators are wholly without remedy or relief in a court of law, and are only relievable in this honorable court of equity, your orators pray that your honors may direct the United States writ of subpœna to issue, under the seal of this court, commanding the defendants, the said Raleigh & Augusta Air-Line Railroad Company, the Raleigh & Gaston Railroad Company, William J. Hawkins, John D. Whitford, and John F. Pickrell, at a day and upon a suitable penalty therein named, to appear and answer, each for himself, upon his corporal oath all and singular the allegations of this bill.

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And your orators further and as special relief pray that upon the final hearing of this cause and in due consideration of the rights of your orators in the premises that this honorable court may order, adjudge, and decree—

First. That the said agreement "A" may, by the decree of this honorable court, be so reformed, amended, and corrected as to require the name of the Raleigh & Augusta Air-Line Railroad Company to be substituted and read in the place of the said John F. Pickrell, who, as the agent of the said company, nominally signed such agreement, at its procurement and request, and for its benefit and advantage; and that said agreement when so reformed may be treated and enforced, as the agreement, covenant, and undertaking of the said company, the same as if the name of said company had been signed; and the seal, with its corporate seal affixed thereto, in the first instance, instead and place of the name of said Pickrell, its said agent and representative aforesaid.

Second. That said company defendant, its agents and attorneys, may be enjoined and restrained by the decretal order of this honorable court from further pretending and maintaining, or attempting to maintain in said court, at law, or otherwise, that said agreement Exhibits "A" and "B" were in any manner, or for any purpose, the agreement, covenant, and undertaking of John F. Pickrell, upon his own responsibility, or for his use, or to deny that said Pickrell's name was used otherwise than as nominally, and was intended, at all times, to mean, express, and represent the said defendant, the then Chatham Railroad Company, now the Raleigh and Augusta Air-Line Railroad Company, as in your orators' bill alleged.

Third. That your orators may be adjudged and decreed to have a prior lien and equity upon all and singular the franchise
24 and estate of the said Chatham Railroad Company, now the Raleigh & Augusta Air-Line Railroad Company, to any and all liens created since the 11th day of September, A. D. 1868, to the full extent and amount of 93,615.57 dollars, with interest thereon at the rate of seven per centum per annum, being the rate of interest in New York, the place of the contract, since the 2d day of November, A. D. 1868, and that your orators' said lien and equity shall take precedence of any and all other liens or equities, created or attempted, since said dates; and that any and all other incumbrance or incumbrances upon the franchise, property, and estate of said company, created since the 11th day of September, A. D. 1868, are null and void, and of no effect, as against your orators, into whomsoever hands the same may have past, or by whomsoever the same may be held.

Fourth. That by virtue of said act of the 15th day of August, A. D. 1868, authorizing the defendant company to issue said bonds, and by virtue of said agreement of the 10th day of September, A. D. 1868, and by virtue of said mortgage executed by defendant company, pursuant to said law, to the State of North Carolina, of the 21st day of September, A. D. 1868, and by virtue of the said 2,000 bonds of said company, so authorized by said act, and secured by said mortgage and delivered to the State of North Carolina in exchange for, and as an indemnity and security to said State for its bonds, that said indemnity and security in equity, extended to and vested in your orators, and still remains vested in them by virtue of said agreement, Exhibits "A" and "B;" and that your orators said lien, equity, indemnity, and security were no manner infected or impaired by reason of any acts of said company or its agents, or the said State and its agents, in the exchange of said bonds after the making of said agreement, as in your orators' bill alleged.

Fifth. That by virtue of said agreement Exhibits "A" and "B," the said company and its agents were in equity created and constituted the trustees of your orators in all matters affect-
ing the issuing, selling, handling, and exchange of said
25 company's bonds for said State bonds, authorized or intended by said act of August 15th, A. D. 1868, and that neither said company, nor said State, nor the servants and agents of them, or either of them, had any right so to do, or lawfully could exchange back said State bonds, when the same were repudiated, or at any other time, to the exclusion of the rights of your orators to have and receive said company's bonds to the amount of said 150 bonds of said company, representing and held for said 150 State bonds, so pledged with and held by your orators and left remaining in the hands of your orators, when said company, by its agents, took advantage of the ignorance and absence of your orators, and made said fraudulent exchange of State bonds for said company's bonds, as in your orators' bill alleged.

Sixth. That said act of August 15th, A. D. 1868, only authorized the issuing in exchange of $2,000,000 of State bonds for $2,000,000

of company's bonds, of the par value of $1,000 each, which would be 2,000 State bonds from No. 1 to No. 2,000, inclusive, in exchange for 2,000 of company's bonds, likewise numbering from 1 to 2,000, inclusive; and that any bond numbering above 2,000, either of the State or company's issue, was and is without authority of law and null and void; and that said 150 State bonds, numbered from 2751 to 2850, and from 2951 to 3000, all inclusive, were bonds not authorized by law, but were and are the mere fabrications of the parties thereto in violation of law, and are utterly null and void.

Seventh. That the said defendants, and the said Raleigh & Augusta Air-Line Railroad Company, and the said Raleigh & Gaston Railroad Company, and all and singular their officers, agents, and servants, may be enjoined and restrained from in any manner mortgaging or encumbering the franchise, property, and estate of the said Raleigh & Augusta Air-Line Railroad Company in any respect or for any purpose, to the exclusion of the rights and equities of your orators, as in their bill alleged.

26 Eighth. That said defendant companies, and each of them, and all and singular their officers, agents, and servants who have received, or hereafter may receive, the receipts, income, and earnings of said Raleigh & Augusta Air-Line Railroad Company, have each and all received, and now hold the same in trust for your orators, to the full amount of $93,615.57, and that said defendants, and each of them, may be decreed and ordered to account to and with your orators, as herein alleged and prayed.

Ninth. That to prevent the further illegal use and appropriation of the property and estate of said Raleigh & Augusta Air-Line Railroad Company by the said defendants, or either of them, your orators pray that a receiver may be appointed by this honorable court, authorized and empowered to take charge of, handle, and operate the railroad of said company, and receive the earnings and income thereof and apply the same, subject to the orders and directions of this honorable court.

Tenth. That the said defendants, William J. Hawkins and John D. Whitford, who secretly constituted the firm of John F. Pickrell & Co. while acting as the agents and fiduciaries of the said defendant, the Raleigh & Augusta Air-Line Railroad Company, and fraudulently derived large profits therefrom, as in your orators' bill alleged, may be adjudged and decreed to have acted in equity as the trustees of your orators, and that they and each of them may be adjudged and decreed to have received all such illegal profits and gains in trust for and to the use of your orators to the full amount of said $93,615.57, and may, as such trustees and *tort feasors*, be ordered, adjudged, and decreed to account to and with your orators therefor.

Eleventh. That the said defendant, the Raleigh & Augusta Air-Line Railroad Company, may be decreed and adjudged to justly owe and stand indebted to your orators in the said sum of $93,615.57, with interest thereon at 7 per cent., as aforesaid, from the said

27 2d day of November, A. D. 1868, and that your orators may have a final judgment and decree therefor, with a right to

enforce the collection thereof out of the goods, chattels, and estate of said defendant company, under the process of execution issued under the seal of this honorable court, and to enforce said judgment and decree as a prior lien upon the franchise, property, and estate of said company.

Twelfth. That your orators may have a final decree for all general and special relief not herein specifically prayed, together with the decree and judgment for their costs and disbursements incurred in the prosecution of this suit.

JOS. B. STEWART,
C. M. McCLOUD,
Solicitors for Complainants.

DAVID COLEMAN,
Of Counsel.

UNITED STATES OF AMERICA,)
Western District of North Carolina,) *ss:*

Hermann R. Baltzer, being duly sworn, upon oath states: That he is one of the complainants in the foregoing bill of complaint; that he has read the same, and knows the contents thereof; that the matters and things therein contained with his own knowledge are true, and as to the matters and things stated on information he believes are true.

H. R. BALTZER.

Subscribed and sworn to before me, this 18th day of October, A. D. 1878.

JOHN W. PAYNE, *Clerk.*

28 EXHIBIT "A."

This agreement, made this eleventh day of September, one thousand eight hundred and sixty-eight, by and between Messieurs Schepeler & Company and Messieurs Baltzer & Taaks, of the city of New York, parties of the first part, and John F. Pickrell, also of the city of New York, party of the second part, witnesseth:

I.

The parties of the first part agree to sell and deliver to the party of the second part, and the party of the second part agrees to purchase and take of the parties of the first part, ten thousand tons of English or Welsh iron rails of well known good brands (twenty-two hundred and forty pounds to the ton, English or American weight), of the pattern knows as Erie T, to be slotted or notched for the ordinary American lip chain, and to be of the usual weights and lengths of what are known in the markets as from fifty to fifty-two pounds per yard, at the price of seventy-nine dollars and thirty-six cents, legal tender United States currency, this price being based upon the present United States duty of fifteen dollars sixty-eight cents, gold; if such duty shall be increased the party of the second part is to be charged with such increase, if actually paid by the part-

ies of the first part; if diminish, he is to be credited with the amount of the diminution; if the benefit of such diminution be actually obtained by the parties of the first part, such charge or allowance is to be made in currency at the rate of one hundred and forty-six for gold.

II.

The iron is to be laden on board ship at the place of shipment for transportation to the port of New York, or, at seller's option, delivered at said port of New York within ten months from the date of this agreement. One thousand tons of said iron are to be laden on ship board at the place of shipment for transportation to New York, or, at seller's option, delivered in New York within six weeks from the date of this contract. The remainder of said iron is to be laden on board ship at the place of shipment for transportation to New York, or, at seller's option, delivered in New York at the rate of about three thousand tons in each three months.

Whenever any of such iron is delivered in New York the same, at seller's option, may be delivered from warehouse or from on board ship in the port of New York; if delivered from warehouse to be delivered at the water's edge.

It is expressly understood that the parties of the first part do not undertake to deliver all the iron within ten months from the date hereof, but do undertake to have all the iron not delivered from warehouse as aforesaid placed on board ship at the place of shipment, ready for transportation to the port of New York within the time aforesaid.

III.

The iron is to be paid for as follows: The party of the second part is to deposit with the Continental National Bank, on or before the execution of this agreement, such an amount of the bonds of the State of North Carolina as will at the market price on the day of deposit be equal to the whole purchase-money for the said ten thousand tons of iron, and fifteen per cent. in addition thereto, which margin of fifteen per cent. is to be kept good until the full performance of this contract. The said bonds are to be held by said bank, subject to the joint order of the parties of the first and second part and William J. Hawkins, or his attorney, or the survivors of said parties respectively, on the presentation of a warehouse receipt or ship's delivery order for any lot of said iron, the party of the second part and said William J. Hawkins, or the survivor of them, are to join with the parties of the first part in drawing an order on said bank, in favor of the parties of the first part, for so many of the said bonds as will at the market price thereof on the day of drawing equal the sum payable for such lot of iron at the price of seventy-nine dollars and thirty-six cents per ton as aforesaid, or pay that amount in money.

Upon presentation of a bill of lading for any lot of such iron placed on ship board for transportation to the port of New York or Norfolk, Virginia, the party of the second part and the said Haw-

kins, or the survivor of them, shall join with the parties of the first part in drawing an order on the said bank in favor of the said parties of the first part for so many of said bonds as will at the market price thereof, on the day of drawing, equal the sum due for the iron mentioned in the bill of lading at forty-nine dollars and forty-six cents per ton, the balance payable for such iron, namely, twenty-nine dollars and ninety cents per ton, shall be paid in like manner on the arrival of the vessel containing the same at the port of New York or the port of Norfolk. Notice shall be given to the party of the second part, or his personal representatives, of the arrival of any ship containing iron, and he or they are to be ready to receive the same whenever ship is ready to discharge.

In the event of the death of the said party of the second part, and no appointment of a personal representative at the time, notice is required to be given; such notice may be given to the said William J. Hawkins by letter addressed to him at the city of New York. If at any time the party of the second part, or his personal representative, or the said William J. Hawkins, or his attorney, or the survivor of them, shall refuse to join in drawing an order for the amount due for iron as aforesaid, the parties of the first part may retain the warehouse receipt or bill of lading or ship's delivery order, and may sell the iron for which payment has been refused at any time after five days' notice of intention to sell, either at public or private sale, for and on account of the party of the second part, or his personal representative, who shall be liable to reimburse the parties of the first part any loss and such resale, such notice of intention to sell to be given by depositing the same in the general post
31 office in the city of New York, addressed to the party of the second part, or his personal representative, or the said William J. Hawkins, in the event of the death of the said party of the second part, and the non-appointment of any personal representative at the said city of New York.

IV.

If any cargo of the said iron shall be lost at sea, or while in port, or for any cause whatsoever beyond the control of the parties of the first part, shall fail to arrive, the parties of the first part shall not be held in any manner liable, or be bound to replace the same. In case of the loss of any iron in transit the parties of the first part agree to refund to the party of the second part the amount paid on the same, as soon as the insurance thereon shall be legally due from the underwriters who shall have insured the same.

V.

The warehouse receipts or ship's delivery order and bills of lading hereinbefore mentioned are to be presented to the party of the second part, or his personal representative, or the said William J. Hawkins at the present office of the said party of the second part, in the city of New York, unless he shall hereafter designate some other place in the city of New York for that purpose.

VI.

It is understood that the said bonds are deposited as a fund out of which to pay for said iron, and that the parties of the first part are to have a lien on the same, for the faithful performance of this contract, on the part of the party of the second part, but it is also understood that the parties of the first part do not look solely to the said bonds for payment, and if for any reason they should at any time fail to constitute a fund for payment, the parties of the first part are nevertheless to be paid for iron at the same rates and times as hereinbefore provided.

32 VII.

The party of the second part reserves the right to sell any or all of the bonds deposited with said bank, and, in case of sale, the money realized for the same, or a sufficient amount to cover the price of all said iron, and fifteen per cent. in addition thereto, shall be placed with said bank on the same terms, and represents the said bonds for all the purposes of this contract.

The said bank shall deliver the bonds sold on the presentation and delivery of such joint order, as aforesaid. The parties of the first part shall have their election to draw, in payment for iron, bonds, or money, the proceeds of bonds, if any shall have been substituted in the place of bonds sold.

VIII.

On receiving timely notice from the party of the second part the parties of the first part agree, if it shall occasion no *no* delay, or not interfere with any pending arrangement or negotiation, to endeavor to place such portion of the iron as they may be requested on board ship for transportation to the port of Norfolk, Virginia; and for all iron shipped to Norfolk instead of New York the party of the second part agrees to pay, in addition to the price before mentioned, the difference between the cost of freight to Norfolk and what would have been the cost of freight if shipped to New York.

IX.

In the event of a breach of this agreement, by either of the parties to the same, the measure of damages recoverable by the parties of the first part shall be the profits which they can, with reasonable certainty, show that they otherwise would have made, and, in addition thereto, any loss sustained on any resale of iron. And the measure of damages recoverable by the party of the second part shall be the difference between the costs of replacing the iron which the parties of the first part may fail to deliver and the price at which they were to deliver.

33 In testimony whereof, the said parties to these presents have hereunto subscribed their names, the day and year first hereinbefore written.

(Signed) SCHEPELER & CO.,
By JOHN T. SCHEPELER.

(Signed) BALTZER & TAAKS,
By H. R. BALTZER.

(Signed) JOHN F. PICKRELL.

In the presence of—
(Signed) GEORGE H. STURR.

STATE OF NEW YORK, *City and County of New York:*

Be it known that on this, the twenty-fourth day of September, in the year one thousand eight hundred and sixty-eight, before me personally appeared John F. Schepeler, Herman R. Baltzer, and John F. Pickrell, known to me to be the individals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same; and the said John F. Schepeler further acknowledged that he executed the same in the name of and as the act and deed of the firm of Schepeler & Co., of which he is a member; and the said Herman R. Baltzer acknowledged that he executed the same in the name of and as the act and deed of the firm of Baltzer & Taaks, of which he is a member.

In witness whereof, I have set my hand and affixed my official seal, the day and year last above written.

[SEAL.] (Signed) GEORGE H. STURR,
Notary Public, New York County.

34 EXHIBIT "B."

Whereas Messrs. Schepeler & Co., Messrs. Baltzer & Taaks, and John F. Pickrell have entered into an agreement of even date herewith, by which means the said Schepeler & Co. and Baltzer & Taaks agree to sell and deliver on certain terms therein mentioned ten thousand tons of iron rails to the said John F. Pickell, a copy of which said agreement is annexed hereto, and which said agreement provides for the payment for said iron by said Pickrell by the appropriation of certain bonds of the State of North Carolina in the manner set forth in said agreement: Now, therefore, in consideration of the premises set forth in the said agreement and of the undertaking of the parties of the first part therein mentioned, as therein expressed, and as hereinafter expressed, I, William J. Hawkins, hereby agree that fourteen hundred bonds of the State of North Carolina, each for $1,000, numbered from 1600 to 3000 inclusive, which are now on deposit in the Continental Bank of the city of New York, subject to my order as president of the Chatham Railroad Company of North Carolina, shall remain on deposit in said bank, subject to the joint order of the parties mentioned in the said contract as being, provided, while said contract is being performed, for the purpose of providing for the payment of said iron, and as security for the performance of

said contract as therein provided; and I agree to unite in drawing the orders therein provided for at the times and in the manner therein set forth; provided, however, that it is hereby distinctly understood and agreed that whenever any delivery of said bonds is to be made, and any order for such delivery is required pursnant to said contract, I am to have the option and right to pay in money the sum payable under said contract for the iron, in respect to which such delivery of bonds is required, at the contract price; that is to say, at the rate of forty-nine dollars and forty-six cents per ton on the presentation of the bill of lading, and twenty-nine dollars and ninety cents per ton on the the delivery of the iron; and upon
35 such money payments being made by me, I shall have the right to withdraw from deposit the bonds which otherwise would have been delivered under said contract, and such bonds shall be delivered to me by said Continental National Bank on the presentation of such joint order as aforesaid, such option and right be exercised by me within five days after being notified in the manner provided in the contract of the right of said parties of the first part therein named to a delivery of bonds pursuant thereto.

It is also hereby expressly provided that in case of loss of the iron or any part thereof, on shipboard between the port of shipment and the port of entry or delivery all payments made on account thereof are to be refunded by said Schepler & Co. and Baltzer & Taaks as soon as such loss is ascertained.

New York, September 11th, A. D. 1878.

W. J. HAWKINS,
President Chatham Railroad Company.

Witness—
JOHN D. WHITFORD.

36 EXHIBIT "C."

CHATHAM RAILROAD COMPANY
to
THE STATE OF NORTH CAROLINA.

NORTH CAROLINA, *Wake County:*

Whereas the General Assembly of North Carolina, by act ratified August 15th, 1868, entitled "An act to amend the charter of the Chatham Railroad Company," authorized the issue of coupon bonds of the State to an amount not exceeding $2,000,000, on condition that the Chatham Railroad Company shall deposit with the public treasurer the coupon bonds of said company, like amounts, and to secure the principal and interest of said coupon bonds, it was enacted that the State of North Carolina shall have a lien upon certain estate and rights of said company in said act and hereinafter mentioned, said lien to be more effectually secured by a first mortgage duly executed by said company; and whereas, said Chatham Railroad Company, by their stockholders in meeting for that purpose duly called, did accept said act as an amendment to their charter, and did subsequently deposit with the public treasurer the

coupon bonds of the company aggregating two million dollars, dated 1st October, 1868, bearing six per cent. interest, the principal payable at the end of thirty years from the date thereof, the coupons of interest payable semi-annually at the National Bank of the Republic, in the city of New York :

Now, therefore this deed of mortgage, executed by the Chatham Railroad Company to the State of North Carolina, this 21st day of September, 1868, witnesseth that the said Chatham Railroad Company, to carry into effect the said act, for the consideration aforesaid, as well as of ten dollars to said company paid, hath bargained and sold, and by these presents doth bargain and sell unto the State of North Carolina all the estate of said company, real and personal, which they may now have or may hereafter acquire, between
37 the points of intersection with the Western Railroad and the South Carolina line, including that at both points, together with all the rights, franchises, and powers thereunto belonging or that may hereafter belong to said company, in respect to that portion of their line, to have and to hold to the said State of North Carolina ; provided, nevertheless, that if the said Chatham Railroad Company shall pay and continue to pay to the State the semi-annual interest on its bonds deposited with the public treasurer as aforesaid within twenty-four months next ensuing after the said interest shall become due, and shall further pay the principal of said bonds within twelve months next ensuing after the said principal shall have matured and become due, then the foregoing conveyance shall be void and of no effect ; otherwise remain in full force and virtue.

And it is further covenanted and agreed that if the said Chatham Railroad Company shall fail to pay the semi-annual interest on its bonds for twenty-four months after such interest shall become due, or to pay the principal of said bonds for twelve months after their maturity, the board of internal improvements, for and on behalf of the State, may enter upon and take possession of all the property hereinbefore specified, and dispose of the same by sale so as to protect the State.

In testimony whereof, the Chatham Railroad Company, by its president, W. J. Hawkins, and two of its stockholders and directors, have hereunto signed and sealed this deed the day and year above written.

W. J. HAWKINS,
Prest. C. R. R. Co.
C. H. K. TAYLOR,
Director of C. R. R. Co.
S. S. ROYSTER,
Director of C. R. R. Co.

Witness :
THOMAS BADGER.

38 NOVEMBER 30TH, 1868.

NORTH CAROLINA, *Wake County:*

The execution of the foregoing mortgage as to W. J. Hawkins was duly acknowledged by him as one of the grantors thereof. Let the same be registered.

J. N. BUNTING,
Probate Judge.

Filed for registration November 30th, 1868, at 4 o'clock p. m.
W. W. WHITE, *Register.*

And registered in the register's office of Wake county, in book No. 26 and page 349, December 1st, 1868.
W. W. WHITE, *Register.*

STATE OF NORTH CAROLINA, *Wake County:*

I, William W. White, register of deeds in and for the county of Wake, State aforesaid, certify the foregoing to be a true copy of a mortgage from the Chatham Railroad Company to the State of North Carolina, together with certificates of probate and registration, as appears of record in my office in book No. 26 and page 349.

In testimony whereof, I have hereunto set my hand and affixed the seal of the board of county commissioners (having no seal of register's office) of Wake county, at office, in the city of Raleigh, the 3d day of January, 1873.

[L. S.]

W. W. WHITE,
Register of Deeds.

39 EXHIBIT D.

Agreement between the Chatham Railroad Company and John F. Pickrell & Co., of New York, made in pursuance of preliminary contract, dated September 1st, 1868, this March 6th, 1869.

The said Pickrell & Co. agree to finish the first section of thirty miles of the Chatham railroad, beginning at Raleigh, including grading, masonry, culverts, and superstructures, but not including bridge over Haw river, under the direction and supervision of the president of the company, the rails in said section to be best English iron of T pattern, fifty pounds to the lineal yard. They agree likewise to furnish like iron for the second section, the total quantity for both sections to be thirty-six hundred and fifteen tons (3,615). The chairs in said first section to be of the Phenix pattern.

Said Pickrell & Co. agree further to complete at Cary the station house, and also a well, side track, water tank, switch and scales, and to build at two other points, to be designated by said president, like station houses, wells, tanks, side tracks, switches, and scales, the side track at all stations to be estimated as part of the thirty miles constituting the section.

It is agreed that the culverts on the said road are to be of stone or

iron, except in the case of low embankments, in which vitrified clay may be used. All the above work and material are to be subject to the inspection of the president of the Chatham Railroad Company. The said Pickrell & Co. agree likewise to furnish two first-class locomotive engines, delivered at Weldon, North Carolina; also ten flat cars, ten gravel or dirt cars, one shanty car, one conductor's car, six pole or band cars; the above list, including those already furnished and received, and said rolling-stock, to be subject to the inspection of the master machinist of the Raleigh & Gaston Railroad Company.

The work above mentioned, and rolling-stock, iron, &c., are to be finished and delivered on or before the first day of August, 1869.

40 In consideration of the faithful performance of this contract the Chatham Railroad Company agrees to pay, from time to time, as the work progresses, six hundred and eleven thousand dollars ($611,000), said Pickrell & Co. accepting bonds of the State at sixty per cent., as per statement rendered.

The said Chatham Railroad Company is to pay for above mentioned iron seventy-nine $\frac{36}{100}$ dollars per ton, and likewise the freight on the iron material and supplies from New York to destinations in the line of the road, the iron to be paid for on delivery at Portsmouth, the payment to be credited on the $611,000 above mentioned.

This contract includes work already done, and material, stock, &c., furnished heretofore, for which receipts have been given and payments made by the parties.

In testimony whereof, the said parties hereto affix their signatures.

W. J. HAWKINS,
Pres't C. R. R. Co.
JNO. F. PICKRELL & CO.

Witness:
(Signed) KEMP. P. BATTLE.
" JNO. D. WHITFORD.

41 Whereupon a writ of subpœna is issued as follows, to wit:

Fourth Circuit.

UNITED STATES OF AMERICA, }
Western District of North Carolina, } *ss:*

The United States of America to the Raleigh & Augusta Air-Line Railroad Company, the Raleigh & Gaston Railroad Company, John F. Pickrell, J. D. Whitford, and Wm. J. Hawkins:

We command you, and every one of you, that you appear before the judge of our circuit court of the United States of America for the western district of North Carolina, at the office of the clerk of the said court, in the town of Greensboro, in said district, on the first Monday in the month of November next, to answer the bill of complaint of Hermann R. Baltzer and William G. Taaks, filed in the clerk's office of said court, in said town of Greensboro, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of North Carolina to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Greensboro, in said district, the first Monday in October, 1878, and in the 103rd year of the Independence of the United States.

Issued the 18th day of October, 1878.

JNO. W. PAYNE, *Clerk.*

Fourth Circuit.

UNITED STATES OF AMERICA, *Western District of North Carolina,* } *ss:*

The United States of America to the Raleigh & Augusta Air-Line Railroad Company, the Raleigh & Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins:

We command you, and every one of you, that you appear before the judges of our circuit court of the United States of America for the western district of North Carolina, at the office of the clerk of the said court, in the town of Greensboro, in said district, on the
42 first Monday in the month of November next, to answer the bill of complaint of Hermann R. Baltzer and William G. Taaks, filed in the clerk's office of said court, in said town of Greensboro, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of North Carolina to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Greensboro, in said district, the first Monday in October, 1878, and in the 103rd year of the Independence of the United States.

Issued the 18th day of October, 1878.

JNO. W. PAYNE, *Clerk.*

Marshal's Return.

To hand October 19th, 1878, at 8½ o'clock p. m., and executed by delivering to J. D. Whitford at 12½ o'clock m., Oct. 21st, 1878, a true copy of the within subpœna.

And by delivery to J. B. Batchelor, one of the directors of the Raleigh & Gaston R. R. Co., and attorney for the same, a true copy of this subpœna at 11 o'clock a. m., October 21st, 1878.

And by delivering a true copy of this subpœna to J. B. Batchelor, as one of the directors of the Raleigh & Augusta Air-Line R. R. Co. and attorney for the same, at 11 o'clock a. m., October 21st, 1878.

And by leaving a true copy of this subpœna at the residence of Dr. W. J. Hawkins, at 1½ o'clock p. m., at Ridgeway, Warren county, N. C., Oct. 22d, 1878.

J. B. HILL,
U. S. Marshal for the Eastern District of N. C.,
Per J. R. O'NEILL,
Deputy U. S. M.

Which writ was returned at rule day, in November, 1878, executed on the defendants named therein.

43 At rule day in November, 1878, time was granted defendants. The Raleigh and Augusta Air-Line Railway Co., Raleigh and Gaston Railroad Co., John D. Whitford, and Wm. J. Hawkins to file answers until the second Monday in January, 1879, when the following answer of the Raleigh and Augusta Air-Line Railway Company was filed:

United States Circuit Court, Fourth Circuit, Western District of North Carolina. In Equity.

HERMANN R. BALTZER AND WILLIAM G. TAAKS, Complainants,

against

THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, Defendants.

The several answers of the Raleigh and Augusta Air-Line Railroad Company, one of the defendants above named, to the bill of complaint of Herman R. Baltzer and William G. Taaks, heretofore filed against this defendant and others in this honorable court.

This defendant, The Raleigh and Augusta Air-Line Railroad Company, styled in plaintiffs' bill the "Company Defendant," and in this answer designated in like manner, saving and reserving, &c., &c., to so much and such parts of plaintiffs' said bill of complaint as this defendant is advised is or are material or necessary for it to make answer unto, answering, says:

I. That it admits the matters stated in paragraph I of plaintiffs' said bill.

II. That it admits, as stated in paragraph II of said bill, that it was and is a corporation created and existing under and by virtue of an act of the General Assembly of the State of North Carolina, ratified on the 15th day of February, 1861, and of several
44 acts and ordinances amendatory thereof, and in the early part of the year 1868 was the owner of an unfinished railroad extending from the city of Raleigh towards the South Carolina State line, and that the defendant, William J. Hawkins, was then its president.

III. In answer to paragraph III of plaintiffs' bill of complaint, the company defendant says: That by an act of the General Assembly of the State of North Carolina, ratified on the 15th day of August, 1868, the public treasurer of the said State was directed to deliver to the company defendant coupon bonds of the State of one thousand dollars each, to an amount not exceeding two millions of dollars, bearing interest at the rate of six per cent., payable semi-annually, the principal of said bonds being payable at the end of thirty years; said bonds to be issued in such form as the public treasurer might direct, and principal and interest payable at such time and place as he might prescribe. By the said act it was further provided that the president of the company should deposit with the

public treasurer coupon bonds of the company of the same amount, bearing the same rate of interest payable at the same time as the State bonds above said; and to secure the principal and interest of the said bonds of the company it was further provided by the said act that the said State should have a lien upon all the estate, real and personal, which the said company might then have, or might thereafter acquire, between the point of intersection with the Western Railroad and the South Carolina State line, including that at both points, together with all the rights, franchise, and powers thereunto belonging, or that may hereafter belong to said company in respect of their portion of line, which line should be more effectually secured by a first mortgage duly executed by said company to the State, and registered in said law provided. A copy of the said act is herewith filled as part of this answer.

IV. In answer to paragraph IV of plaintiffs' bill of complaint the company defendant says: That so far as it has any knowl-
45 edge or information on which to found a belief, it denies the matters stated in said paragraph IV of plaintiffs' bill, as follows: 1st, That the defendants, Hawkins and Whitford, went to the city of New York before the first day of September, 1868, and though the defendant Pickrell sought to utilize said State bonds by purchase for said company of 10,000 tons or any other quantity of iron rails; 2d, That the said Pickrell and Whitford then, or at any other time, acted as the agents of the said company, under the direction of its president, the said Hawkins, for the purchase of said iron of the firm of Schepler & Co., or of any other firm; 3d, That the said Pickrell and Whitford, either or both, were introduced to the plaintiffs as agents of said company, and were so recognized by its president, the defendant Hawkins, and proposed to purchase 10,000 tons of iron rails for the said company, and that said bonds should be pledged as security for the payment of said iron. All the facts known to this defendant in relation to all the matters stated in this paragraph will be in this answer hereafter set forth fully and at large.

VI. This company defendant emphatically denies that the said Pickrell and Whitford, or either of them, were agents for the company defendant, or had any authority whatever to represent or act for, or make any statement in behalf of the company defendant in reference to the several matters stated in paragraph VI of the plaintiffs' bill, and if such representation and statements were made by the said Pickrell and Whitford, or either of them, which the company defendant, from information and belief denies, such statements and representations are wholly unauthorized and unknown to the company defendant or to its president, the said Hawkins.

VII. In answer to paragraph VII of the plaintiffs' bill this defendant says it has no knowledge or information of any such agreement between the plaintiffs and Schepler & Company, as is stated in this paragraph.

VIII. In answer to paragraph VIII of the plaintiffs' bill the company defendant repeats its denial of matters in this paragraph
46 argumentatively reiterated and hereinbefore denied and explained. It has been informed that a rough draft of a con-

tract between the plaintiffs and Schepler & Company and the defendants, Pickrell & Whitford, was drawn up. It has no knowledge or information at whose instance or under whose direction this was done. Its first and only information in reference thereto was derived from the exhibition of such an unexecuted instrument on the trial of an action at law between the plaintiffs and this defendant, had at a term of this court begun on the first Monday in October, 1878. The company defendant denies that it was in any way a party to, or intended to be a party to, or to be bound by the said contract, or that it was drawn with the knowledge or consent of any agent or officer of this company authorized to act for it in this behalf.

IX. In answer to paragraph IX of plaintiffs' bill the company defendant says that it denies that the said agreement or contract was submitted to the said Hawkins as president of the said company, and that he made any correction, alteration, request, suggestion, or statement of fact therein, or in reference thereto. In fact, this defendant is informed and believes that the said Hawkins never saw said writing until it was shown at the trial, as above said.

X. Answering paragraph X, the company defendant says that the insinuation of "deception and fraud" on the part of the defendants, made in this paragraph, is utterly and gratuitously false. The company defendant admits that on the 11 day of September, 1868, a contract was executed by and between the said Schepler & Company and the plaintiffs of the first part, and the defendant, John F. Pickrell, of the second part, a copy of which, marked "Exhibit A," is filed with and as part of plaintiffs' said bill, but it denies that the said contract was in any respect made or modified at the request or suggestion of the defendant Hawkins.

XI. In answer to paragraph XI of plaintiffs' bill the company defendant says that after the execution of the said contract by the said parties the defendant Hawkins was requested by the
47 plaintiffs and the said Pickrell to sign the paper, a copy of which is marked "Exhibit B," and filed with plaintiffs' bill. This paper bears date the 11th September, 1868, but was not executed on that day, nor until several days thereafter, and formed no part of the contract above mentioned between the plaintiffs and Schepeler & Company, of the first part, and said Pickerell, of the second part, but was a separate and independent agreement on the part of said Hawkins for the purpose therein contained. A fuller statement of the purpose and inducement of the said Hawkins in the execution of the said paper will be hereinafter given.

XII. Answering paragraph XII of plaintiffs' bill, this defendant denies that the said two papers marked "Exhibits A and B" were parts of one contract and executed for one purpose. It denies that it was in any way, either directly or indirectly, a party to the said contract "Exhibit A," or was in any way bound thereby, and avers that the said contract was the contract of the parties signing the same, and binding on them alone; and it denies that the plaintiffs ever bound themselves to deliver to the company defendant 10,000 tons of iron rails, or any other quantity of iron rails, by or through said contract, or any other contract made directly with the company

defendant, or indirectly through any agent authorized to act for it, No copy or duplicate original of said contract was delivered to this defendant, or to defendant Hawkins. One was kept by the plaintiffs and one by Pickrell; afterwards defendant Pickrell did hand a copy or duplicate original thereof to defendant Hawkins.

XIII. Answering paragraph XIII of plaintiffs' bill, the company defendant says that it has no knowledge or information of the purpose or intention of the plaintiffs in executing the said contract with the defendant Pickrell. It is advised that the said contract is clear and unambiguous in its terms, and that the meaning thereof can be easily ascertained from the language used by the parties. That the said paragraph is augmentative, and contains no direct statement of fact required to be answered by this defendant further than is hereinbefore or will be hereafter fully and directly answered.

48 XIV. Answering paragraph XIV of plaintiffs' bill, the company defendant admits that on the 11th September, 1868, the State bonds had not been issued by the treasurer, but it repeats the denial heretofore made of the agency of the said Pickrell and Whitford, or either of them, for or on behalf of the said company, and their authority to make any representation or statement for it in reference thereto. The said Hawkins was then president of the company defendant, and had authority from it to negotiate the sale of said bonds for the purpose of raising funds to construct its roads, and the company defendant had before that time accepted a proposition from the defendant Pickrell, for himself and associates, to construct and equip its road, which will be hereinafter more fully referred to, and the defendant Hawkins then verily believed that the said bonds, which were issued by the treasurer of the State, under and by virtue of the act of the General Assembly hereinbefore referred to, were a valid and legal security, binding upon the State; but the company defendant denies that the said Hawkins made any communication or statement to the plaintiffs in reference thereto. This defendant is advised that the validity or invalidity of said bonds is a question of law, and this defendant and said Hawkins were advised by their attorneys that said bonds were valid and legal.

XV. Answering paragraph XV of plaintiffs' bill, the company defendant says that the facts are fully and accurately stated in paragraph III of this answer.

XVI. Answering paragraph XVI, the company defendant, repeating its several denials of matters herein again repeated, says that the plaintiffs, in execution of their said contract with defendant Pickrell (Exhibit A), delivered to him, on or about the 12th day of October, 1868, about six hundred and thirty tons of said iron, for which the said Pickrell paid them in full. It denies that the plaintiffs delivered to it the six hundred and thirty tons of iron, as stated in this paragraph, or that said company defendant paid plaintiffs for the same.

49 XVII. Answering XVII of plaintiffs' bill, the company defendant says that the said Hawkins, its president, did receive from the treasurer of the State two thousand coupon bonds of the State, each for one thousand dollars, duly issued in accordance

with the provisions of the said act of the General Assembly, without the aid of the said Whitford or Pickrell, neither of whom was then the agent of the company for any purpose. That about the same time the company defendant did execute and deliver to the said treasurer its coupon bonds to the same number and amount, and did execute a mortgage to the State, all under and in accordance with the provisions of the said act of the General Assembly. The said mortgage is dated the 21st day of September, 1868; a copy thereof is filed with plaintiffs' bill, marked Exhibit "C."

XVIII. Answering paragraph XVIII of plaintiffs' bill, the company defendant says that the said State bonds were received by its president from the public treasurer on the 19th day of October, 1868. It therefore denies the matters stated in this paragraph.

XIX. The company defendant admits that the plaintiff- tendered the delivery of iron on or about the 2d day of November, 1868, to the defendant Pickrell, amounting to twenty-one hundred and four tons, of the value of about $167,097.13, in part execution of their said contract with said Pickrell. It denies the allegation of the delivery of iron to this defendant made in this and paragraph XX of plaintiffs' bill.

XX. The company defendant is informed and believes that between the 2d and 21st days of November, 1868, the plaintiffs did deliver to the defendant Pickrell about twenty-one hundred tons of the said iron, as above said, under said contract of the 11th September, 1868, and that the defendant Pickrell paid the plaintiffs for the same the amount agreed on in the said contract. It is informed and believes that between seventy-three and seventy-four thousand dollars of this sum was paid in money and the balance in the said bonds of the said State of North Carolina, worth at that time
50 about ninety-four thousand dollars; that these bonds were received by the plaintiffs in full payment and satisfaction of the balance then due them by Pickrell on the said iron, constituting the deliveries 2, 3, and 4, and that they credited the said Pickrell with the same, or proceeds thereof. The company defendant is not informed of the kind of bonds which the plaintiffs expected to receive, nor whether the plaintiffs had been informed by any one authorized to give such information that the bonds showed on the face that a tax was levied for the payment of the principal and the interest thereon. From information and belief it denies that the plaintiffs were so informed; and it, from information and belief, further denies that the plaintiffs accepted such bonds only as a security for the amount then due them from said Pickrell, but avers that the said bonds were received by the plaintiffs in full satisfaction and discharge of the balance due them for the iron delivered as aforesaid. It further denies that plaintiff delivered this iron, or any of it, to this defendant. The bonds received by plaintiffs were those referred to in said "Exhibits A and B," and which were deposited in the Continental Bank.

XXI. Answering paragraph XXI, the company defendant says that it denies that the said bonds have been at any time publicly declared, by any authority having jurisdiction so to do, to be fraud-

ulent and void, as procured by corrupt legislation and issued in violation of the constitution of the State of North Carolina. It avers, from information and belief, that at the time when the said bonds were received by the plaintiffs from the said Pickrell, as aforesaid, they were regarded as valid and legal securities of the said State of North Carolina, and were recognized by the Stock Exchange of the city of New York as such valid and legal securities, and as a good delivery in the purchase and sale of North Carolina State bonds of the new issue. A demand was afterwards made on this defendant, the facts in regard to which are fully stated in next paragraph of this answer.

XXII. Answering paragraph XXII, the company defendant
51 says that it has no knowledge as to what demand was made by plaintiffs on the defendants Whitford and Pickrell, nor as to any admission made by them, or either of them; but it denies that it or its president, or any of its duly authorized agents or officers, ever promised or agreed to pay plaintiffs anything on account of said iron, or admitted any obligation of the company defendant so to do, or that it had any contract with plaintiffs in relation thereto. It further denies that plaintiffs ever released it from any contract for the purchase of said ten thousand tons of said iron. The plaintiffs did afterwards give defendant Pickrell a release in writing from his said contract, "Exhibit A."

XXIII. Company defendant admits that plaintiffs brought suit against it in the United States circuit court for the western district of North Carolina, which suit was commenced on the 28th day of December, 1872, and is still pending in this court, being an action at law involving the same matters which are litigated in this suit. This action is still pending and undetermined, and defendant submits to this honorable court whether that plaintiffs ought not to have or maintain this action against it for the same cause of action.

XXIV. Answering paragraph XXIV, company defendant says that it did answer the complaint of the plaintiff in the action above referred to, and it now avers that all matters stated by it in its said answer are true as therein stated. And it now says that the statement of plaintiff in this paragraph that this defendant falsely and fraudulently evaded and denied the rights of plaintiffs, with a view of cheating and defrauding them, is false.

XXV. That as to matters stated in paragraph XXV, the same, being matters of record, will fully appear by the record of said action when the same shall be produced by the plaintiffs in the progress of this action.

XXVI. Answering paragraph XXVI, company defendant says that a trial of the action at law was had at the time and place mentioned, much of what is stated in this paragraph was then
52 stated by the attorney for plaintiffs, in his opening address to the court and jury, but no legal proof of such statements was offered by plaintiffs. One of the plaintiffs, Hermann R. Baltzer, was the only witness put on the stand by the plaintiffs. By him they proposed, in the said trial, to prove who was or who was intended to be bound by the contract "Exhibit A," the execution of which by

the plaintiffs and Schepler & Co. of the first part, and the defendant, John F. Pickrell, of the second part, was alleged by plaintiffs and admitted by the company defendant. The defendant objected to this evidence, and it was excluded by the court as incompetent and inadmissible. The plaintiffs offered no other witness and no further evidence, and admitting their inability to succeed in the said action at law, asked the court to withdraw a juror and make a mistrial, which was allowed by the court in terms, and the plaintiffs were allowed by the court to amend their complaint, which they have thus far failed to do. This defendant denies that plaintiffs offered any evidence tending in the slightest degree to prove the false and slanderous charges so freely made in the opening address of counsel, and now repeated in this bill, and it avers on information and belief that such charges are wholly untrue, both in reference to this defendant and the said Hawkins and Whitford, and that plaintiffs had no evidence to prove the existence thereof.

XXVII. Answering paragraph XXVII of plaintiffs' bill, this defendant says that so far as relates to the matters accruing on the trial, it only availed itself of its legal rights as then declared and decided by said court. That it availed itself of no false or unfair answer or proceeding, as indeed it could not have done, the whole proceeding being under the control of the court. In respect to the charge of conspiracy and fraud on the part of this defendant and Hawkins and Whitford and Pickrell, this company says that plaintiffs have failed to state any facts in support of such charge, and it now again repeats its denial of this repeated charge, and declares it to be wholly false and without foundation, both in respect to
53 this company and of the defendants, Hawkins and Whitford.

As to matters of law alleged in this paragraph, it is advised that no answer is required thereto.

XXVIII. Answering paragraph XXVIII, this defendant says that it has herein before answered and denied the several matters herein alleged and charged against it, and it now repeats its denial, and says that no such fraud, conspiracy, or scheme ever existed on the part of this company defendant, nor, so far as it is informed and believes, on the part of said Hawkins and Whitford.

XXIX. Answering paragraph XXIX, this defendant says that on the first day of September, 1868, the defendant, John F. Pickrell, for himself and his associates, Greenleaf, Norris & Company, and Charles Gould, made a proposition in writing to the company defendant to build and equip its road from Raleigh, in the county of Wake, to the South Carolina State line, which was accepted by the company on the 4th day of September, 1868. A copy of said proposition is filed with this answer, marked "Exhibit E." At the time the public treasurer of the State had been authorized and directed by the act of the 15th of August, 1868, aforesaid, to issue to company defendant two million dollars of State bonds, which, with its other means, the company defendant thought would be sufficient to complete the work, or so nearly so as to enable it to complete it without difficulty. The validity of these bonds, however, having been questioned in the latter part of 1868 and the first of 1869, and

it therefore becoming improper to sell or dispose of them, the means of the company were greatly reduced, and it was unable to prosecute the work as originally intended. The contract with said Pickerell & Company was therefore modified, and the written contract, a copy of which, marked "Exhibit D," and filed with plaintiffs' bill, was thereupon executed by said parties, to wit, John F. Pickerell & Company and this defendant, by its president, under this contract, the said Pickerell & Company, by themselves and through their agents and subcontractors, did build and equip the road to a point near Haw river, and furnished the iron to its junction with
54 the Western Railroad at Sanford, in the county of Moore. This defendant is informed and believes that said Hawkins had no interest whatever in said contract; and it refers to the answer of said Whitford, made and filed herein, as to his connection, if any, with said contract, and it denies all and any combination and conspiracy whatsoever, by it or any of its officers, to cheat or defraud plaintiffs or any other person.

XXX. Answering paragraph XXX, this defendant denies all knowledge or information as to any unfair or fraudulent conduct or combination of the company or any of its officers, in reference to the contract for building said road or in execution thereof; and it further refers to and adopts as its own the answers of the defendants, Hawkins & Whitford, as to the several matters of fact herein alleged and charged as to them.

XXXI. Answering paragraph XXXI, this defendant says that it is informed and believes that said work was done and executed by said Pickrell and his agents and subcontractors, and it denies all knowledge, information, or belief as to the unlawful and fraudulent combination of parties mentioned in this paragraph; and it refers to and adopts the answer of said Hawkins and Whitford as to the matters herein alleged and charged as to them.

XXXII. Answering paragraph XXXII, this defendant says that it denies that said bonds have been declared unconstitutional by final decision of any court having jurisdiction so to do. It did have, on the 3d of December, 1868, means derived from other sources, not from the sale of these bonds, sufficient to have paid the demand which the plaintiff now makes, but avers that it was not a party to said contract between plaintiff and Schepler & Company and Pickrell, and was under no liability to plaintiffs arising therefrom, or on account of any bond transaction between said parties or any other parties. It did, on or about 3d of December, 1868, direct defendant Pickrell to turn over its funds then held by him
55 to said Whitford, who was then appointed agent of the company, to receive and hold the same, and the said Whitford then, for the first time, became the agent of this company to hold its funds in the city of New York. This defendant, through its president, said Hawkins, about that time directed said Whitford to invest about three hundred thousand dollars of said funds in United States bonds, which was done by him. This was done for the reason that the fund being large and not required for immediate use by the company, it was deemed most prudent to invest it in such securities

as were at the same time safe, certain, and most easily convertible into money when the company should have occasion to use its funds in carrying out its contract for the construction of its road.

XXXIII. Answering paragraph XXXIII, this defendant says it has hereinbefore denied all knowledge or belief of the facts herein stated, and it now refers to and adopts as its own the answer of said Hawkins and Whitford as to the matters herein stated.

XXXIV. Answering paragraph XXXIV, this defendant says that it is not required to answer unto the statements and conclusions of law herein contained as to the implied statement that bonds were returned to the State, and that plaintiffs had no notice of such return; defendant says that N. W. Woodfin, agent and attorney for plaintiffs, was duly notified before such return was made that it was the purpose of the company to comply with an act of the General Assembly of said State, then recently passed, and to return said bonds, so far as they were in the possession and control of the defendant, and to return other valid State bonds in lieu of those which had passed out of its possession to the treasurer of the State, which notice was given to said Woodfin before any bond was returned to the treasurer by this defendant, and before the commencement of any action by the plaintiff against this defendant.

XXXV. Answering paragraph XXXV, this defendant says
56 that an act was passed by the General Assembly of said State, which was ratified on the 5th day of February, 1870, by which this defendant was required to return to the treasurer of the State all of said bonds. In obedience to this act this defendant did return to said treasurer sixteen hundred and fifty of said bonds, and afterwards returned fifty-three more of said bonds, and in obedience to this act and under the provisions of the 3d section of the act of 15th August, 1868, before referred to, this defendant did purchase other valid and legal bonds of the State and returned them to the said treasurer, and did receive from said treasurer all of the bonds of this company defendant delivered to said treasurer under the provisions of said act of 15th August, 1868. The plaintiffs were notified through their attorney, said N. W. Woodfin, of the purpose of defendant to do this before it was done, and defendant is advised that in making said exchange it only did what it was its right and duty to do under the provisions of said act. It now avers most positively that in making this return of bonds it had no purpose to injure, hinder, or delay the plaintiffs in any of their just rights, or in the assertion thereof.

XXXVI. Answering paragraph XXXVI, this defendant says that this defendant and the Raleigh and Gaston Railroad Company are separate and distinct corporations, organized, existing, and acting under and by virtue of separate, distinct, and different charters; that there are a great many stockholders of the latter who are not stockholders of the former, and some of the stockholders of the former are not stockholders of the latter; while several of the officers of the one have also been officers of the other, they hold each office by *by* a different election or appointment; that said Raleigh and Gaston Railroad Company never held any of the bonds of this company, defendant mentioned above, and does not now hold any of

said bonds, and has had no dealings with this company defendant in reference thereto, and sets up no claim as against this company defendant or against the plaintiffs arising out of any matter or dealing connected with said bonds.

57 XXXVII. Answering paragraph XXXVII, this defendant says that on the 7th day of April, 1877, it did execute a deed of trust or mortgage to Charles M. Robinson, of New York; Charles C. Savage, of Philadelphia, and John W. Graham, of Hillsboro, North Carolina, to secure the holders of guaranteed stock issued by it in accordance with a resolution of the stockholders of this defendant made prior to the issue of said guaranteed stock, and by virtue of the provisions of an act of the General Assembly of the State of North Carolina, ratified the 13th day of December, 1871, and that the said mortgage was executed in good faith, and only for the reason and purpose above specified. This defendant denies any conspiracy with said Hawkins, Whitford, and others in making said mortgage, or for any other purpose, and states that all allegations that said mortgage was made for any other purpose than is herein stated are untrue.

XXXVIII. Answering paragraph XXXVIII, this defendant says that the charge contained in this paragraph, to wit, that the Raleigh and Gaston Railroad Company, together with said Hawkins and Whitford and others, are in receipt of the earnings and income of this company defendant, is false; on the contrary, this company defendant is by its proper officers in the full and absolute receipt of all its earnings and income, without any control of any other person or corporation whatsoever, and uses the same in its regular course of business, and not one dollar of its earnings and income is misapplied.

XXXIX. Answering paragraph XXXIX, this defendant says that it is advised and believes that said bonds, issued under act of 15th August, 1868, have not been declared unconstitutional and void by final decision of any court having jurisdiction so to do; as to the other matters alleged herein, this defendant has hereinbefore answered, so far as it is advised it is material or necessary for it to answer the same.

58 XL. Answering paragraph XL, this defendant says that under and by virtue of the act of 15th of August, 1868, the said bonds, not to exceed the amount of two million dollars, of one thousand dollars each, were directed to be issued "in such form as the public treasurer may direct." This company defendant, under the provisions of the ordinance of the convention, had already received from the State twelve hundred bonds, numbered from one to twelve hundred, both inclusive. When, therefore, the public treasurer was directed to issue two thousand bonds in addition to the twelve hundred already received by the company defendant, there being nothing in said act requiring said bonds to bear any particular form or number, the public treasurer caused them to be numbered from twelve hundred and one to thirty-two hundred, both inclusive. This was done at the suggestion and for the convenience of the public treasurer, and not because this defendant had or felt

any interest therein. But this defendant is at a loss to conceive how this could work any injury to plaintiffs or any other person, since they allege that all the bonds, whether numbered high or low, are equally unconstitutional and void.

XLI. Answering paragraph XLI, this defendant says it is ignorant what numbers were received by plaintiffs, but it denies every charge of fraudulent interest herein charged against it or its officers, and all knowledge or belief that the validity of said bonds, or any part thereof, depended on or was affected by the numbers of the same, and, as above said, if all of said bonds are invalid, what benefit could plaintiff derive from low numbers which the high numbers cannot give them? Such allegations appear to this defendant to be trifling with a grave subject, and to be lugged in as occasion for again repeating a false and slanderous charge of fraud and conspiracy, which the plaintiffs well knew never had any foundation in fact, and which is reiterated without the allegation of any adequate facts to support it.

XLII. Answering paragraph XLII, the defendant says that it denies that it is now or ever was indebted to plaintiffs in any
59 sum arising out of said contract, Exhibit "A," or on any account arising out of or connected therewith. The said contract for iron was made with said Pickrell, and this defendant has paid said Pickrell in full for every bar thereof placed or used by him or by any other person or company in building and equipping its said road, and this defendant is further informed and believes that plaintiffs have sold ten of said bonds, and received pay for the same.

XLIII. Answering paragraph XLIII, the defendant says that the company defendant is the absolute owner, except as hereinbefore stated, of all its franchise and property, real and personal; that the value of its franchise is great; that its property consists of ninety-seven miles of finished and equipped road, which cost over eighteen hundred thousand dollars in money; is in good condition, running regularly every day freight and passenger trains; able to meet and meeting and discharging all its liabilities and obligations when they fall due, and does not owe and is in no manner liable for anything over and above its regular expense, which it meets promptly and without default, except as above stated; that its earnings are largely in excess of its current expenses, and its affairs are managed prudently and economically. It denies that it is insolvent.

XLIV. Answering paragraph XLIV, this defendant says that it is advised that the matters herein contained are matters of law not required to be answered unto by this defendant.

XLV. Further answering plaintiffs' said bill, this defendant says that it was authorized by its charter, which granted by the Legislature of North Carolina in February, 1861, and various amendments thereto, to construct, equip, and operate a railroad from the city of Raleigh to the South Carolina State line. By an ordinance of the convention of 1868 of the people of North Carolina the public treasurer was directed to deliver to it upon certain terms in the said ordinance specified one million two hundred thousand dollars of the

bonds of the said State; and the act of the Legislature here-
60 inbefore referred to, ratified 15th day of August, 1868, the public treasurer was directed to deliver to it, as hereinbefore stated, the additional sum of two million dollars of State bonds of said State, making, in all, bonds of the said State of the par value of three million two hundred thousand dollars issued to this company. With the proceeds of these bonds it was the purpose of said company to construct its road between the termini above said. On the first day of September, 1868, the defendant, John F. Pickrell, for himself and associates, Greenleaf, Norris & Co., and Charles Gould, made a proposition in writing to construct and equip its said road between the points aforesaid, a copy of which is hereinbefore referred to, marked "Exhibit E." This proposition was, on the 4th day of September, 1868, accepted by the company, but, for the reasons hereinbefore stated in paragraph —— of this answer, this contract was afterwards modified, and on the 6th of March, 1869, a contract, marked "Exhibit D," was executed by and between this defendant and the said John F. Pickrell & Co. After the said proposition of the said Pickrell and associates was made and accepted by this company as aforesaid, the said Pickrell and the plaintiffs and Schepler & Co. entered into the contract in writing referred to in plaintiffs' complaint and in this answer as "Exhibit A," and dated 11th September, 1868, whereby the plaintiffs bound themselves to deliver to said Pickrell ten thousand tons of iron rails on the terms and in the manner stated in said contract, and the said Pickrell bound himself to purchase of the plaintiffs and the said Schepler & Co. the said ten thousand tons of rails, to be paid for at the price and on the terms in the said contract mentioned and set forth. This defendant was not a party to the said contract, and in no way bound thereby, and had no knowledge or information concerning the same until after the making thereof by the said Pickrell and the plaintiffs and the said Schepler & Co. The said Pickrell was not then the agent of the company defendant, and had no power or authority from it to make or enter into the said contract, or any other contract,
61 with the plaintiffs or any other parties for the purchase of iron or anything else for or on behalf of this defendant. But this defendant is informed and believes that the said Pickrell made and entered into the said contract with the plaintiffs and Schepler & Co. for himself, to enable him to fully execute his contract with this defendant as above said for building its road from Raleigh to the South Carolina line. That this defendant is informed and believes that when the said contract was made and entered into by the plaintiffs and Schepler & Co., of the first part, and the said Pickrell, of the second part, the plaintiffs well knew that the said Pickrell was not the agent of this defendant in making said contract, and had no authority to contract for or bind it thereby, and that the plaintiffs well knew that the said Pickrell made and entered into the said contract for himself.

XLVI. After the said contract, "Exhibit A," was signed and executed by said parties thereto, the defendant Hawkins was requested by the plaintiff and the said Pickerell to sign the paper filed with

plaintiffs' bill, marked "Exhibit F." This paper bears the date 11th September, 1868, but defendant was informed and believes that it was not signed on that day, nor until some time thereafter. The contract between this defendant and the said Pickrell for the construction and equipping of its road as aforesaid had been before that time entered into by and between them, and the said Hawkins was induced to sign the said writing, "Exhibit B," to enable the said Pickrell to carry out his contract with the plaintiff and Schepler & Co., by which said Pickrell expected to procure the iron with which to lay the track of the said road, and with no purpose or intent to become a party to the said contract himself, or to bind this defendant thereby. And this defendant avers that the said Hawkins has executed and performed every part of his said undertaking and agreement, and that neither the said Hawkins nor this defendant ever had any contract or agreement with the plaintiffs save and except that contained in said writing marked "B," as aforesaid.

62 XLVII. Further answering, this defendant says that the delivery of iron by the plaintiffs was made to said Pickrell under their said contract with him and upon his responsibilty, and that the said Pickrell paid the said plaintiffs in full for all the iron delivered by them, in money and the said State bonds, which were received by the plaintiffs in payment and satisfaction for said iron and appropriated by them to their own use.

XLVIII. Further answering, this defendant says that they paid the said Pickrell in full for all the work done by him and materials furnished, including the iron in the construction and equipping of their road, and have in all respects fully complied with their contract with said Pickrell.

XLIX. Further answering, this defendant says that by the 3d section of the said act of the 15th August, 1868, it was provided as follows, to wit: "The Chatham Railroad Company may, at any time before maturity, discharge the bonds of said company deposited with the public treasurer by substituting in lieu thereof coupon bonds of the State or other indebtedness of the State or payment in national currency." This defendant is advised that this section forms a part of the contract between it and the State, under which it received said bonds, and that it had the right to substitute valid bonds of the State in lieu of its own bonds at any time before their maturity, and having done this in good faith, and in accordance with the provisions of the said act, the plaintiffs are not injured thereby, and have no right to object thereto; and the plaintiffs taking the said State bonds issued under the provisions of said act are presumed to know the contents of said act, and to have notice of rights of defendant under the same.

L. Further answering, this defendant says that it is advised that before the said plaintiffs can have any decree of this honorable court whereby the said State, which, through its proper officer, has accepted the exchange of said bonds as aforesaid, shall be de-

63 clared a trustee for them, or whereby any trust shall be declared for their benefit, the said State is a necessary party to this suit, without which no such decree can be made.

LI. This defendant avers that the contract on which the plaintiffs

bring their action was reduced to writing and signed by the parties thereto; that no part of said contract was omitted which was intended by the parties thereto to be inserted, and nothing was inserted therein which was not intended to be inserted; and that said contract cannot be altered, amended, varied, or added to by parol testimony.

LII. And this defendant submits to this honorable court that all and every the matters in said plaintiffs' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said plaintiffs are not entitled to any relief from a court of equity, and this defendant hopes he shall have the same benefit of this defense as if he had demurred to complainants' bill.

LIII. Further answering, this defendant says that the plaintiffs' said cause or causes of action, if such they have, all and every part thereof, arose and accrued to said plaintiffs more than three years before the commencement of this suit, and the said plaintiffs are barred of their right to maintain this suit by the statutes limiting the time within which such suits shall be brought; and this defendant insists upon the said statute, and claims the same benefit therefrom as if it had pleaded the same in bar of plaintiffs' suit.

LIV. And this defendant further insists that, by the lapse of time and the failure of plaintiffs to assert, by suit, any purely equitable right they had or might have had in the premises, they ought not now be allowed to have or maintain their said suit in equity against these defendants or either of them. Wherefore this defendant prays to be hence dismissed, with its costs, in this behalf most unjustly expended.

MERRIMAN, FULLER & ASHE,
J. B. BATCHELOR,
Solicitors for Defendant.

64 United States Circuit Court, Fourth Circuit, Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, William J. Hawkins, John D. Whitford and John F. Pickrell, Defendants.

The answer of the Raleigh and Augusta Air-Line Railroad Company to the plaintiffs' bill of complaint filed in the above-named suit, taken this 11th day of January, A. D. 1879, before N. J. Riddick, clerk of the circuit court of the United States for the eastern district of North Carolina, under the common seal of the said company, by said seal affixed appears.

By order of the company:

W. W. VASS, [SEAL.]
Secretary and Treasurer.

[SEAL.] N. J. RIDDICK,
Clerk U. S. Circuit Court Eastern District of N. C.

UNITED STATES OF AMERICA, *Western District of North Carolina:*

I, John W. Payne, clerk of the United States circuit court in and for the western district of North Carolina, hereby certify the foregoing writing is a true, correct, and complete copy of the original now on file and remaining of record in my office, at Greensboro, N. C.

In testimony whereof, I hereunto set my hand and affix the seal of said court, this the 13th day of January, A. D. 1879.

[SEAL.] JOHN W. PAYNE,
Clerk of the United States Circuit Court for the Western District of North Carolina.

65 And on said second Monday in January, 1879, the Raleigh and Gaston Railroad Company filed the following answer:

Circuit Court of the United States, Fourth Circuit, Western District of North Carolina.

HERMAN R. BALTZER AND WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, Defendants.

This defendant, the Raleigh and Gaston Railroad Company, saving and reserving, &c., all and every, &c., for answer to so much and such parts of plaintiffs' said bill of complaint as it is advised that it is incumbent on it to answer, answers and says:

That by an act of the General Assembly of the State of North Carolina, entitled "An act concerning the Chatham railroad, amendatory of certain acts and authorizing a change of name," ratified 13th day of December, 1871, a copy of which is herewith filed, marked Exhibit G, it is provided, among other things, that said railroad company, defendant, may issue guaranteed or preferred stock, on which such interest or dividend may be guaranteed by said company defendant as the directors may deem advisable; and it was further provided in said act that the company defendant might secure such guaranteed interest or dividend by liens or mortgages upon all the property, franchise, and income of the company, or upon any portion thereof. It is further provided by said act that this defendant, or any other railroad company, might subscribe for or purchase and hold the stock of any kind of the company defendant, whether guaranteed, preferred, or common. Soon after the passage of this act the said company defendant resolved to issue one million two hundred thousand dollars of guaranteed stock, upon which a dividend of eight per cent. was guaranteed, payable
66 either annually or semi-annually, and opened books of subscription for said stock.

This defendant, having authority so to do by its charter and the act above referred to, subscribed for and took ten thousand shares of

said stock of the par value of one million dollars, and has paid for the same in full.

It was deemed fair and proper that the said company defendant should secure all payments due thereon by mortgage on its property, franchise, and income, in accordance with the provisions of said act. This was accordingly done, and such mortgage or deed in trust was executed by the company defendants to trustees on the 7th day of April, 1877, whereby was conveyed to said trustee- all the said company's railroad, rights, privileges, and franchise, and all its works and property of every description, in trust, to secure the dividends guaranteed by said company defendant on the guaranteed stock issued by it. This deed in trust was executed for this purpose alone, and has been duly registered according to law.

Further answering, this defendant says that it has no lien on the property or income of the company defendant except the above; that it does not now own, and that it never has owned, any of the bonds of the company defendant which were deposited with the treasurer by it under the act of 15th August, 1868, nor does it own any of the bonds of the State which were issued to said company defendant under said act.

Further answering, this defendant says that the charge contained in paragraph 38 of plaintiffs' said bill, to wit, that this defendant, together with said Hawkins and Whitford and others, are in receipt of the earnings and income of the company defendant, is false; on the contrary, the said company is in the full and absolute receipt of all its earnings and income, without any control of any other person or corporation whatsoever, and uses the same in its regular course of business, and not one dollar of its receipts or income is misapplied, so far as this defendant is informed or believes.

Further answering, this defendant says that the plaintiffs' said cause or causes of action, if such they have, and all and
67 every part thereof, arose and accrued to said plaintiffs more than three years before the commencement of this suit, and the said plaintiffs are barred of their right to maintain this suit by a statute limiting the time within which such actions shall be brought, and this defendant insists upon the said statute, and claims the same benefit therefrom as is he had pleaded the same in bar of plaintiffs' suit.

And this defendant further insists that by the lapse of time and the failure of plaintiffs to assert by suit any equitable rights they might have had in the premises until after the dealings aforesaid had by this company with the company defendant, the plaintiffs ought not now to be allowed to have or maintain this suit in equity against the defendants, or either of them; wherefore this defendant prays to be hence dismissed, with costs in this behalf most unjustly expended.

MERRIMAN, FULLER & ASHE,
JOS. B. BATCHELOR,
Solicitors for the Defendants.

United States Circuit Court, Fourth Circuit, Western District of North Carolina.

HERMAN R. BALTZER AND WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, William J. Hawkins, John D. Whitford, John F. Pickrell, Defendants.

The answer of the Raleigh and Gaston Railroad Company to the plaintiffs' bill of complaint, filed in the above-named suit, taken this 11th day of January, A. D. 1879, before N. J. Riddick, clerk of the circuit court of the United States for the eastern district of North Carolina, under the common seal of the said company, as by said seal affixed appears.

By order of the company,

W. W. VASS, [SEAL.]
Sec. and Treasurer.

[SEAL.] N. J. RIDDICK,
Clerk U. S. Circuit Court, Eastern Dist. of N. C.

68 UNITED STATES OF AMERICA, *Western District of N. Carolina.*

I, John W. Payne, clerk of the United States circuit court for the western district of N. Carolina, certify that the foregoing writing is a true, correct, and complete copy of the original now on file and remaining of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the circuit court for the aforesaid Dist., at Greensboro, N. C., this the 13th day of January, A. D. 1879.

JNO. W. PAYNE, *Clerk.*

69 And on said second Monday of January John D. Whitford filed the following answer:

Circuit Court of United States, Fourth Circuit, Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, The Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, Defendants.

The defendant, John D. Whitford, saving and reserving, &c., &c., for answer to so much and such parts of plaintiffs' said bill of complaint as he is advised it is material for him to answer unto, answers and says: This defendant has carefully read the answers of the defendants, The Raleigh and Augusta Air Line Railroad Company and William J. Hawkins, to the plaintiffs said bill of complaint, and from his knowledge and information he believes the same to be true and accurate in all respects, and he refers to and adopts the same as part of his answer herein.

Further answering, this defendant says that he never at any time had any authority from the said company defendant, nor from the said defendant Hawkins, to negotiate, make, or enter into any contract with the plaintiffs or any person or corporation whatever for the purchase of iron for or on behalf of the said company defendant, and that this defendant never pretended or stated to any one that he had any such authority, and never acted or pretended to act as the agent of the said company defendant, or of said defendant Hawkins, in negotiating or making any contract for iron. This defendant is informed and believes that the said contract entered into by and between the plaintiffs and Schepler & Co. of the first part, and the defendant John F. Pickrell of the second part, dated 11th day of September, 1868, a copy of which is filed with plaintiffs' bill,
70 marked Exhibit "A," was made and entered into by the said Pickrell, and that the said Pickrell was not, and in the making of the said contract did not, pretend to act as the agent of the said company defendant, and that the plaintiffs entered into the said contract with the said Pickrell well knowing that the said Pickrell was not the agent for said company defendant, and was not acting or contracting for it.

Further answering, this defendant says that he was advised, and verily believes, that the ten thousand coupon bonds of the State of North Carolina, issued to the company defendant under the provisions of the act of 15th August, 1868, and referred to in plaintiffs' bill of complaint and answers of said company defendant and said defendant Hawkins, were legal and valid securities of the said State, and honestly entertaining this opinion, and knowing no reason to doubt the same, he doubts not that he frequently expressed it, both to the said Pickrell and to the plaintiffs, but this defendant avers most positively that this was done only as an expression of his own opinion as to the legal character of the said bonds, and as a repetition of the opinion of others better informed than himself on the subject.

Further answering, this defendant says that the said Hawkins was not a partner with the said Pickrell, or Pickrell & Co., in the contract made by him or them with said company defendant, the terms of which were embraced in the proposal of said Pickrell for himself and associates to the said company defendant, dated 11th day of September, 1868, nor did the said Hawkins, so far as he is informed and believes, have any interest therein.

Further answering, this defendant says that the said Hawkins was not a partner with the said Pickrell in the contract of the 11th September, 1868, made by said Pickrell with the plaintiffs and said Schepler & Co., nor did the said Hawkins have any interest whatever therein.

Further answering, this defendant says that it is not true that he made or received any profit by, through, or on account of con-
71 tract between the said Pickrell and the said company defendant, as alleged in 30th paragraph of plaintiffs' bill of complaint. On the contrary, this defendant did not make or receive anything

from or on account of the said contract over and above his expenses incurred therein or in reference thereto.

Further answering, this defendant says that it is not true that he ever, by himself or together with said Pickrell, acted as agent for the company defendant, nor for the said defendant Hawkins, in making the said contracts, or either of them, nor that he acted or made statements in relation thereto under the direction of the said Hawkins; and the allegations of fact contained in paragraph 6 of plaintiffs' bill of complaint, so far as the same refer to this defendant and his actions and doings in the premises, are wholly untrue and without foundation. This defendant made no such statements as are therein alleged to have been made by him, and had no authority from the said Hawkins so to do.

Further answering, this defendant says that upon the trial of an action at law between the plaintiffs and the company defendant, a paper writing purporting to be a first or rough draft of the said contract of the 11th September, 1868, was shown by the plaintiffs, in which the name of this defendant appears as one of the contracting parties of the second part; but, upon the copying of the said contract, his name was omitted therefrom because he refused to sign the same. So far as he is informed or believes, the said first draft of said contract was never exhibited to or examined by the defendant Hawkins, nor was any amendment or alteration thereof made at the instance, request, suggestion, or advice of said Hawkins. The name of this defendant was omitted therefrom for the reason above stated, and not at the request of the said Hawkins. And neither this defendant nor the said Hawkins, so far as he is informed or believes, ever made the statements alleged in paragraph 9 of plaintiffs' said bill of complaint.

Further answering, this defendant says, from information and belief, that the said proposal of John F. Pickrell, dated 1st Sep-
72 tember, 1868, on behalf of himself and associates, was made for and on behalf of the said Pickrell and Greenleaf, Norris & Co., and Charles Gould, all of whom were parties of large means and high financial reputation; and that the said Greenleaf, Norris & Co. and Charles Gould were parties with Pickrell to the said proposal.

Further answering, this defendant says that he was not authorized by the company defendant, nor by the said Hawkins, to make any admission as to the rights of the plaintiffs to receive payment from any person or company for or on account of said bonds, or for the iron mentioned in said contract of 11th September, 1868, nor did he at any time make any such admission for or on behalf of the company defendant.

Further answering, this defendant says that the matters stated in paragraphs 28, 29, 30, and 31, so far as the same refer or are applicable to this defendant, are utterly false. That this defendant never at any time entered into any secret scheme, combination, or conspiracy with the said Hawkins, or any other person or company, and never made any false representations or statement to the plaintiffs, and was never a party to or had any connection with any con-

tract executed either in the name of John F. Pickrell or John F. Pickrell & Co., or any other real or pretended firm, for the purpose of cheating or defrauding the plaintiffs; nor did this defendant and the said Hawkins make and realize profits exceeding one hundred thousand dollars, or profits to any other amount, out of said contracts, as alleged in paragraph 30 of plaintiffs' complaint. And every allegation to the contrary in paragraphs 28, 29, 30, and 31 are wholly false and unfounded. This defendant is informed and believes that the said Pickrell & Co., either by themselves or their agents and subcontractors, did construct and equip the road of the company defendant from Raleigh to near Haw river, and furnished a large amount of iron in accordance with the modified contract dated 6th March, 1869, which is filed with plaintiffs' bill and marked Exhibit "D," and that the company defendant has paid the said Pickrell in full according to the said contract.

73 Further answering, this defendant says that about the fall or summer 1868 this defendant went to the city of New York, and there connected himself in business with the defendant, John F. Pickrell, who was then a broker in said city with large means and good financial credit. That the terms of the connection between this defendant and said Pickrell were, that this defendant was to receive a commission or interest in the profits upon all business that he should influence and carry to said Pickrell, and that this connection continued between him and said Pickrell until about the — day of ——, 1870. This defendant having influenced the business which the said Pickrell obtained from the company defendant, this defendant was interested to the extent of his commissions on the same.

Further answering, this defendant says that on or about the 3d day of December, 1868, he was appointed agent of the company defendant for the purpose of receiving and holding its funds then in the city of New York, and disposing of them as might be directed by the president of the said company defendant, and then for the first time became agent of the company defendant, and for the purpose stated and no other. On the said 3d day of December, 1868, the sum of $386,465.92 was transferred from the account of said Pickrell to John D. Whitford, "agent" on the books of Greenleaf, Norris & Company, and thereafter a large part of said fund was invested by him, under the direction of the said defendant Hawkins, in United States bonds, which was done for the reasons stated in the answers of the company defendant, and the balance was disposed of under direction of the said Hawkins, who was then its president.

Further answering, this defendant says that the matters stated in paragraph 43 of plaintiffs' bill of complaint, so far as the same are applicable to this defendant, are false. This defendant verily believes that the said bonds were good and valid securities, and in expressing that opinion to the plaintiffs he acted in entire good faith and without any intent whatever to mislead or deceive the

74 plaintiffs, and he had no reasons to believe, and did not believe, that the said bonds would soon prove to be fraudulent and void and cease to be salable in the market, and every allega-

tion to the contrary in said paragraph of plaintiffs' bill is wholly unfounded.

Further answering, this defendant says that throughout the whole of his connection with this business he made no statement or representation to the plaintiffs which he did not himself believe to be true; that he entered into no scheme, combination, or conspiracy with the said Hawkins, or any other person or company, for the purpose of injuring or of defrauding the plaintiffs, and if any such was formed or existed on the part of any other person or persons or company he had not then and has not now any knowledge thereof, and he now most positively denies the truth of every such allegation, charge, or insinuation contained in plaintiffs' said bill of complaint.

And this defendant, further answering, says that plaintiffs' said cause or causes of action, if such they have, and all and every part thereof, arose and accrued to them more than three (3) years before the commencement of this suit, and that said plaintiffs are barred of their action in this behalf by the statute of limitations, and the time prevented by law within which such action shall be brought, and this defendant insists upon said statute and claims the same benefit therefrom as if he had pleaded the same.

MERRIMAN, FULLER, ASHE & BATCHELOR,
Solicitors for Defendants.

UNITED STATES, *Eastern District of North Carolina:*

The defendant, John D. Whitford, being duly sworn, says, upon oath, the foregoing answers are true as of his own knowledge, except as to matters stated on information and belief, and as to such matters he believes it to be true.

JOHN D. WHITFORD.

Sworn to and subscribed before me, this 11th day of January, 1879.

[SEAL.] N. J. RIDDICK,
Clerk U. S. Circuit Court, Eastern District N. C.

75 UNITED STATES OF AMERICA,
Western District of N. Carolina:

I, John W. Payne, clerk of the United States circuit court, western district of N. Carolina, hereby certify that the foregoing writing is a true, correct, and complete copy of the originals now on file and remaining of record in my office at Greensboro, N. C.

In testimony whereof, I hereunto set my hand and affixed the seal of said circuit court at Greensboro, N. C., this 13th day of January, A. D. 1879.

[SEAL.] JNO. W. PAYNE,
Clerk of U. S. Circuit Court, West. Dist. of N. C.

76 And on said second Monday William J. Hawkins filed the following answer:

United States Circuit Court, Fourth Circuit, Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, Defendants.

The several answers of Wm. J. Hawkins, one of the defendants to the bill of complaint of Herman R. Baltzer and W. G. Taaks, complaints, above named.

This defendant now, and for all time thereafter, saving and reserving, &c., &c., for answer unto so much and such parts of the plaintiffs' said bill of complaint that this defendant is advised is or are material or necessary for him to make answer unto, answers and says: This defendant was elected president of the Chatham Railroad Company about the month of July, 1868, and was re-elected and filed the said office for several years thereafter. Said corporation, under and by virtue of its charter, which was granted in February, 1861, and various amendments thereto, was authorized to construct and operate a railroad from the city of Raleigh to the South Carolina State line. In order to enable it to do this the public treasurer of the State was authorized by an ordinance of the convention of 1868 to issue to the said company coupon bonds of the State to the amount of $1,200,000, on the terms and conditions in the said ordinance set forth and declared. Afterwards, by an act of the General Assembly of the said State, ratified the 15th day of August, 1868, the public treasurer was directed to issue to the said company the further sum of $2,000,000 in the coupon bonds of the said State, upon the terms and conditions in the said act set forth and declared. These bonds having been issued by the public
77 treasurer, under the provisions of said ordinance and act of the General Assembly, and received by the company, it was the purpose of the said company to construct and equip its road between the said termini with the proceeds thereof. On the 1st day of September, 1868, the defendant, John F. Pickrell, for himself and associates, Messrs. Greenleaf, Norris & Co., and Charles Gould, made a proposition, in writing, to the said company, a copy of which is filed with its answer herein, marked Exhibit "E," to construct and equip its said road, between the termini above mentioned, upon the terms and for the price in the said proposal stated. This proposition was accepted by the company on the 4th day of September, 1868. For the reasons stated in the answer of the company herein, this contract was afterwards modified, and, on the 6th day of March, 1869, a written contract was entered into by and between the said company and the said Pickrell & Co., a copy of which, marked Exhibit "D," is filed with plaintiffs' bill of complaint. By the first propo-

sition of said Pickrell and associates, which was accepted by the company, they were bound to furnish iron to lay the whole track between the termini aforesaid. This defendant is informed, and believes, that the said Pickrell was then regarded and was a man of large means, and of good credit in financial and commercial circles in New York, and his said associates were also regarded as men of large means. On the 11th day of September, 1868, the plaintiffs, and Schepler & Co., of the first part, and the said Pickrell, of the second part, entered into a contract, in writing, whereby the plaintiffs and Schepler & Co. bound themselves to sell and deliver to the said Pickrell 10,000 tons of iron rails, and the said Pickrell bound himself to purchase and receive from the plaintiffs and the said Schepler & Co. the said 10,000 tons of iron rails, at the price and on the terms and conditions in the said contract set forth and declared. A copy of said contract is filed with plaintiffs' bill, marked Exhibit "A."

Neither this defendant nor the said company defendants was a party to the said contract, nor were they bound thereby,
78 nor did they have any interest therein. The said Pickrell was not the agent of the said company, and had no authority to make any contract for it for the purchase of the said iron; and the said Pickrell made the said contract for himself, and to procure the iron wherewith he could perform the said contract with company defendant for constructing and equipping its road, as above said. And the defendant, from information and belief, says that the plaintiffs knew that the said defendant Pickrell was not the agent of the said company defendant, and that he had no authority to make said contract for the purchase of the said iron for it, or on its behalf, and that the plaintiffs made the said contract with the said defendant Pickrell, well knowing that he was acting for himself, and not for the said company defendant.

The said plaintiffs, before entering into said contract with said Pickrell, fully acquainted themselves with the financial condition of said Pickrell, and knew he was doing business in the city of New York, was of good credit, and having large means, and contracted with him with the full knowledge of all the facts and circumstances connected with the said contract. This defendant denies that he visited the city of New York before the 1st day of September, 1868, and sought to utilize the said bonds, through the said Pickrell, in the purchase of the said iron. He further denies that either the said Pickrell or the defendant Whitford were at that time agents of the said company for the purchase of iron, or had any authority from this defendant, or from said company, to purchase said iron for it, or to make any proposal therefor. And this defendant further says, from his best recollection, that he had no knowledge of the said contract between the plaintiffs and Schepler & Co. and the said Pickrell until after the terms thereof were agreed on, and he thinks it was signed by the parties before it was seen by him. Further answering, this defendant says that neither of the defendants, Pickrell nor Whitford, had any authority from this defendant to make the statements contained in paragraph six of plaintiffs' com-

plaint, and, from information and belief, this defendant denies that such statements were made by them to the plaintiffs.

79 Further answering, this defendant says that he has no knowledge or information as to the matters stated in the 8th and 9th paragraphs of plaintiff's bill of complaint. That he never saw the paper called "A," protocol of an agreement, "and a project of an agreement" in paragraph 8 of plaintiffs' complaint, until it was shown on the trial of and action at law between the plaintiffs and the company defendants, at the last term of this court, and that it is not true that the said paper writing was at any time submitted to the examination of this defendant, and was ever corrected or altered by him or at his suggestion; or that he made any statement or representation in relation thereto. This defendant admits that the contract marked Exhibit "A" was entered into by and between the parties signing the same, but he has no knowledge or information as to the changes made in the original draft of said instrument, except that he has been informed by the said Whitford, since the trial above referred to, that he, the said Whitford, refused to sign the same. After the execution of the said contract, Exhibit "A," this defendant was requested by the plaintiffs and the defendant Pickrell to execute the writing marked Exhibit "B," which he did. This paper is also dated September 11th, 1868, but was not executed on that day, nor until some time thereafter. It was no part of the contract between the plaintiffs and Schepler & Co. and Pickrell, marked Exhibit "A," but was a separate and independent contract on the part of this defendant to aid the said Pickrell in paying for the iron which he had contracted to purchase from plaintiffs and Schepler & Co. The said Pickrell and the company defendant, as before stated, had already made the contract for constructing and equipping the said road by him, and for which he would be entitled to receive a large sum of money from said company, which was to be paid him in said State bonds, or from the proceeds of the sale thereof: and this defendant was advised that all payments in money or bonds made directly to the said Pickrell, or indirectly for his benefit, would be in part satisfaction of what the said company would owe him upon the execution of his said contract with it.

80 This defendant, for these reasons, signed the said writing, marked Exhibit "B," for the purposes therein contained, and not as forming any part of the said contract (Exhibit "A") between the said Pickrell and the plaintiffs and Schepler & Co.; and so far as this defendant is informed and believes, the said two papers were not then regarded by any of the parties thereto as forming parts of the same contract, but as distinct contracts, each binding upon the party or parties signing the same, and upon him or them alone; and this defendant further avers that he has fully performed, executed, and complied with every part of his said agreement, Exhibit "B."

Further answering, this defendant says that on or about the 12th of October, 1868, the plaintiffs did deliver to John F. Pickrell, defendant, about 630 tons of said iron, which delivery was made to said Pickrell in part execution of the contract between him and the

plaintiffs and Schepler & Co., and the plaintiffs received payment therefor from said Pickrell, according to said contract. That on or about the 2d of November, 1868, the plaintiffs tendered to the said Pickrell further deliveries of iron, numbered, respectively, deliveries 2, 3, and 4, amounting to about 2,100 tons, of the value of about 167,000 dollars; that very soon thereafter the said iron was received by the said Pickrell, and he paid the plaintiffs for the same, to wit, between seventy-three and seventy-four thousand dollars in money, and one hundred and fifty coupon bonds of the State of North Carolina, and which were worth at that time in the stock market in New York about 94,000 dollars; these bonds were received by the plaintiffs from said Pickrell, and by them the proceeds thereof were passed and placed to the credit of said Pickrell upon his said contract with plaintiffs, to wit, Exhibit "A," and were not received by plaintiffs as a security for the payment of the amount due them on said contract, Exhibit "A." This defendant has no information as to the kind of State bonds which the plaintiffs expected to receive, nor has he any information or belief that the plaintiffs expected to receive bonds which had "evidence expressed on the face thereof of authorization of tax to be levied for the
81 payment of the interest or principal of the same," nor does he believe that such was the fact, for the reason that up to that time, and for some months thereafter, there was no distinction made in the market between this class of bonds, now known as "special tax bonds," and other State bonds of the new issue, and it had not then been suggested by any one that the levying of a tax for the payment of interest and principal was necessary to their validity. The bonds thus received by the plaintiffs were the State bonds referred to, specified, and described in Exhibit "A and B," filed with plaintiffs' bill of complaint. This defendant then entertained the opinion, and was so advised by his attorney and by the Governor, public treasurer, and attorney general of the State, that the said bonds were valid and legal securities of the said State, and were issued in accordance with the laws and constitution thereof, and at the time the said bonds were so received as aforesaid, and for some time thereafter, they were regarded in the market of New York and by the Stock Exchange of New York as valid and lawful securities of the said State, and as a good delivery upon the purchase and sale of North Carolina State bonds of the new issue, all of which was well known to the plaintiffs when they received the same.

Further answering, this defendant says that the said bonds have not been declared by any court having jurisdiction so to do to be fraudulent and void, as procured by corrupt legislation and issued in violation of the constitution of the said State. This defendant is informed that the said bonds were afterwards excluded from the stock board, as all special tax bonds have been.

Further answering, this defendant says that it is not true that he or the co-defendant has, at any time, in the slightest degree, admitted that the said company defendant was liable to the plaintiffs for anything whatever on account of the said iron or on account of

the bonds received by them in payment therefor: on the contrary,
this defendant has always alleged that the said Pickrell made
82 the said contract with the plaintiffs and Schepler & Co. for
himself, and that such was known to the plaintiffs, and that neither this defendant nor the said co-defendant was a party to said contract, nor in the most remote manner bound thereby. As to the matter stated in paragraphs 23, 24, 25, 26, and 27, this defendant refers to and adopts the answer of the co-defendant thereto, which he has read and fully understands. And this defendant now most positively avers that every charge and insinuation contained in said paragraphs of plaintiffs' bill fraudulent representation, scheme, combination, conspiracy, deceit, and fraud made against this defendant alone or against this defendant with said Whitford, or with any other person or corporation, is wholly and entirely false and unfounded.

Further answering, this defendant says that the matters stated in paragraphs 28, 29, 30, and 31 of plaintiffs' bill, so far as the same refer to this defendant, are wholly and entirely false.

Further answering, this defendant avers that he was not a partner of the said Pickrell, nor of the said Pickrell & Co., and that he did not have any interest in any of the contracts either of the said Pickrell or of the said Pickrell & Co., and never made or received one cent of profit thereby or therefrom, and that the statement to the contrary contained in paragraph 30 of plaintiffs' bill is false.

Further answering, this defendant says that while he made no statement to the plaintiffs in reference to the validity of the said bonds before the contract of the 11th of September, 1868, was made and entered into by and between the plaintiffs and Schepler & Co. of the first part, and the said Pickrell of the second part, yet he admits that not only up to but since the 11th day of September, 1868, he was and has been of the opinion that the said bonds were legal and valid securities of the said State; that he was so advised by his attorneys, and such was the opinion of the Governor, public treasurer, and attorney general, and other parties learned in the law. Hon-
estly entertaining this opinon, and being thus advised, he ad-
83 mits that he frequently expressed the opinion that the bonds
were valid, and he may have done so in the office of the plaintiffs in the city of New York during the only visit he ever made there, which was after the 11th of September, 1868.

This defendant is informed and believes that said bonds have not been up to the present time declared by final decision of any court having competent jurisdiction so to decide illegal and void, and until such decision is made he insists that they are legal and valid.

Further answering, this defendant says that the said two thousand bonds were regularly executed and issued by the public treasurer and other officers of the State, and delivered to the said company defendant under and by virtue of the said act of the General Assembly, ratified the 15th day of August, 1868, and that all the terms, conditions, and requirements of the said act were fully complied with by the said officers and by the company defendant, and that the said bonds were numbered from 1201 to 3200, both inclu-

sive, by direction of the public treasurer, because the said co-defendant had already received 1,200 coupon bonds of the State under an ordinance of the convention hereinbefore referred to, which bonds were numbered from 1 to 1200, both inclusive, and for no other reason, so far as he is informed and believes. All of the said 2,000 bonds were of the same validity, which, depending upon the same facts and law, and the charge that this defendant used the high numbers of the said bonds because he believed them to be of less validity, or for the purpose of deceiving or defrauding the plaintiffs, is gratuitously false.

And as to all the matters and things in the plaintiffs' bill of complaint alleged and charged, which are not herein fully answered unto, this defendant says that he has carefully read the answer of the company defendant herein, and he believes the same to be true and accurate in all respects, and he refers to and adopts the same as part of this his answer to the plaintiffs' said bill of complaint.

And this defendant, further answering, says that the plaintiffs' said cause or causes of action, if such they have, and all and every part thereof, arose and accrued to the said plaintiffs
84 more than three years before the commencement of this suit, and that said plaintiffs are barred of their action in this behalf by the statute limiting the time within which such actions must be brought. And this defendant insists upon the said statute, and claims the same benefit thereof as if he had pleaded the same.

MERRIMAN, FULLER & ASHE,
JOSEPH B. BATCHELOR,
Solicitors for Defendants.

UNITED STATES OF AMERICA,
Eastern District of North Carolina:

The defendant, Wm. J. Hawkins, being duly sworn, upon oath says: That the foregoing answer is true as of his own knowledge, except as to matters stated on information and belief, and as to such matters he believes it to be true.

W. J. HAWKINS.

Sworn and subscribed before me, this 13th day of December, 1878.

[SEAL.] N. J. RIDDICK,
Clerk U. S. Circuit Court, Eastern District of North Carolina.

85 UNITED STATES OF AMERICA,
Western District of North Carolina:

I, John W. Payne, clerk of the United States circuit court for the western district of North Carolina, hereby certify that the foregoing writing is a true, correct, and complete copy of the original, now on file and remaining of record in my office at Greensboro, North Carolina.

In testimony whereof, I hereunto set my hand and affix the seal of

the circuit court, on this 13th day of January, A. D. 1879, at Greensboro, North Carolina.

[SEAL.]

JNO. W. PAYNE,
Clerk U. S. Circuit Court for the Western District of North Carolina.

MERRIMAN, FULLER & ASHE,
J. B. BATCHELOR,
Solicitors for Defendant.

86 January 27th, 1879, the following replication to the answer of the Raleigh and Augusta Railroad Company was filed:

United States Circuit Court, Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

And now come the complainants and by protestation not admitting all or any of the matters and things in the answer of the defendants, The Raleigh and Augusta Air-Line Railroad Company, to be true in point of fact or good and sufficient in law to be replied unto, for replication thereunto say:

That these repliants deny each and every matter and thing in the said answer not admitted or maintained in their bill of complaint filed herein; that these repliants re-aver, charge, and state all and singular the matters and things in their said bill alleged and charged; and that the same are true in point of fact and good and sufficient in law, which they will at all times well and truly maintain before this honorable court.

Wherefore these repliants pray for judgment, and for all and singular the relief, general and special, as in their said bill they have prayed.

JOS. B. STEWART,
C. M. McLEOD,
D. COLEMAN,
Solicitors for Complainants.

87 And on said 27th of January, the following replication to the answer of the Raleigh and Gaston Railroad Company was filed:

United States Circuit Court, Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

And now come the complainants and by protestation not admitting all or any of the matters and things in the answer of the defendant The Raleigh and Gaston Railroad Company to be true in point of

fact, or good and sufficient in law to be replied unto, for replication thereunto say:

That these repliants deny each and every matter and thing in the said answer not admitted or maintained in their bill of complaint filed herein; that these repliants re-aver, charge, and state all and singular the matters and things in their said bill alleged and charged; and that the same are true in point of fact, and good and sufficient in law, which they will at all times well and truly maintain before this honorable court.

Wherefore these repliants pray for judgment and for all and singular the relief, general and special, as in their said bill they have prayed.

JOS. B. STEWART,
C. M. McLEOD,
D. COLEMAN,
Solicitors for Complainants.

88 And on said 27 of January the following replication to answer of John D. Whitford was filed:

United States Circuit Court for the Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

And now come the complainants and by protestation not admitting all or any of the matters and things in the answer of the defendant, John D. Whitford, to be true in point of fact or good and sufficient in law to be replied unto, for replication thereunto say:

That these repliants deny each and every matter and thing in the said answer not admitted or maintained in their bill of complaint filed herein; that these repliants re-aver, charge, and state all and singular the matters and things in their said bill alleged and charged, and that the same are true in point of fact, and good and sufficient in law, which they will at all times well and truly maintain before this honorable court.

Wherefore these repliants pray for judgment, and for all and singular the relief, general and special, as in their said bill they have prayed.

JOS. B. STEWART,
C. M. McLEOD,
D. COLEMAN,
Solicitors for Complainants.

89 And on the 27th day of January the following replication to answer of Wm. J. Hawkins was filed:

Circuit Court of United States, Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

And now comes the complainants, and by protestation not admit-

ting all or any of the matters and things in the answer of the defendant, William J. Hawkins, to be true in point of fact, or good and sufficient in law to be replied unto for replication, thereunto say:

That these repliants deny each and every matter and thing in said answer not admitted or maintained in their bill of complaint filed herein; that these repliants re-aver, charge, and state, all and singular, the matters and things in their said bill alleged and charged, and that the same are true in point of fact and good and sufficient in law, which they will at all times well and truly maintain before this honorable court.

Wherefore these repliants pray for judgment, and for all and singular the relief, general and special, as in their said bill they have prayed.

JOS. B. STEWART,
C. M. McLEOD,
D. COLEMAN,
Solicitors for Complainants.

90 Replications having been filed to the several answers, upon notice given to the said defendants that an application would be made for the appointment of a special examiner in this case, residing in the city of New York and State of New York, when, upon motion of plaintiffs' counsel, the following order was made by the court and entered of record:

In the Circuit Court of the United States, Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS
vs.
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

It appearing from the notice filed and served by the complainants that they desire the evidence to be adduced in this cause to be taken orally, and have applied for the appointment of a special examiner, residing in the city of New York, to take testimony at that place, it is now and hereby ordered that R. E. Stillwell, a United States commissioner, residing in the city of New York, be, and he hereby is, appointed a special examiner of this court to examine orally and reduce to writing the testimony of such witnesses as may be presented by either party to the above-entitled suit, in manner and forms as provided by the sixty-seventh rule of equity provided.

Ordered in chambers, this 20th day of March, 1879.

ROBT P. DICK, *Judge.*

A certified copy of which order was delivered to said R. E. Stillwell.

91 And upon the 16th of July, 1879, upon notice, Thomas R. Purnell was appointed by order of court special examiner, residing in eastern district of North Carolina, to record proofs in this cause, a certified copy of said order was delivered to said Purnell.

On October 28th, 1879, the following decree *pro confesso* is filed in the cause:

United States Circuit Court, Fourth Circuit, Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY and others, Defendants.

It appearing that the above-entitled suit in equity is pending and at issue in this court, and the complainants have served notice on the defendants that they desire the evidence to be adduced in the cause "to be taken orally," as provided by rule sixty-seven (67) in equity procedure, and the depositions of witnesses residing in the eastern district of North Carolina are material and necessary to be read in the trial of the issues in the above-entitled suit, it is now and hereby ordered—

That Thomas R. Purnell, United States commissioner, residing at Raleigh, North Carolina, be, and he hereby is, appointed a special examiner for this court to take the depositions of such witnesses as may be brought before him by either party, to be read in evidence in the trial above-entitled suit, in manner and form as provided by rule sixty-seven of equity practice.

Done in chambers, this 16th day of July, 1879.

ROBT P. DICK, *Judge.*

92 And at April term, 1880, of aforesaid court, the following judgment decree was filed:

United States Circuit Court for the Western District of North Carolina. In Equity.

HERMAN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, JOHN F. PICKRELL, JOHN D. WHITFORD, and WILLIAM J. HAWKINS.

And now come the complainants, by Joseph B. Stewart, their solicitor, and move the court for a decree *pro confesso* against the defendant, John F. Pickrell, for the reason that said Pickrell, though duly subpœnaed by the writ of subpœna under the seal of this court to appear and answer the complainants' bill herein, hath failed so to do, but made default therein; and it appearing that said defendant Pickrell, though so served with such subpœna more than sixty days prior to the entry of this order, to wit, in the month of October, 1878, commanding him to appear and answer the complainants' bill, and that said Pickrell has made default therein, and thereby confessed all and singular the allegations of complainants' said bill; wherefore it is now, and upon further motion of complainants' solicitor, ordered, adjudged, and decreed that the same be taken *pro confesso.*

JOS. B. STEWART,
C. M. McLEOD,
D. COLEMAN,
Solicitors for Complainants.

Dated October 28, 1879.

93 And at the said April term of said court the following order of publication is filed:

Circuit Court of the United States, Western District North Carolina. April Term, 1880.

And now comes the complainants, by their solicitor, and moves the court that an order of publication be passed and entered for all and several the depositions taken and filed by the parties, complainants and defendant, in this suit. Wherefore it is now, by the court, ordered that publication of the testimony in this suit be, and the same is now and hereby, passed.

—— ——, *District Judge.*

94 United States Circuit Court, Western District of North Carolina. In Equity.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

Testimony taken on the part of the complainants under the sixty-seventh rule of the Supreme Court of the United States (as amended), before R. E. Stilwell, special examiner duly appointed, to be used on the final hearing of said cause before the circuit court of the United States for the western district of North Carolina, in equity.

FRIDAY, *April 4th*, 1879.

Present: Joseph B. Stewart, Esq., counsel for complainants; T. C. Fuller, Esq., and E. R. Robinson, Esq., counsel for defendants.

JOHN F. PICKRELL, called as a witness on behalf of the complainants, and being duly sworn, deposes and says:

By Mr. FULLER: Mr. Commissioner, in the notice that we have received it is to take the deposition of witnesses generally, without any witness being named at all. Mr. Pickrell is brought here as a witness from the State of North Carolina. I had not expected that Mr. Pickrell would be examined here at this time. I merely make this statement because it may be necessary for me to apply to you for time to cross-examine Mr. Pickrell in order that I may send down and get papers if I should need them. I merely mention this in advance so that if it is necessary I shall ask for an adjournment to cross-examine Mr. Pickrell.

By Mr. STEWART: Which will be given, of course.

95 Counsel for complainant states that the examination of the witness is being conducted under the sixty-seventh rule of equity practice, as modified and published in the December term of 1861, which, among other things, provides that "either party may give notice to the other that he desires the evidence to be adduced in the cause to be taken orally, and thereupon all the witnesses to be examined shall be examined before one of the examiners of the court, or before an examiner to be specially appointed by the court, the examiner to be furnished with a copy of

the bill and answer, if any," which has been observed. The commission is therefore open to either party; and where such is the case it does not require to conform to the rule of naming the witnesses as in filing interrogatories; and that the witness now under examination, although called from North Carolina, is called to the place where the contract occurred, where the evidence of the transaction exists, and where the parties were doing business at the time of making the contract:

Q. 1. State your name, age, residence, and occupation.

A. I would like to see what my testimony has been heretofore, Colonel Stewart, if you please; it has been so long; I have been examined before in this matter, I think, and I would rather refresh my memory; haven't you the papers?

Q. 2. It is possible. (Question repeated.)

A. John F. Pickrell; residence, North Carolina; I was born in 1824; and a gentleman; I do nothing; I do not know of any other occupation that I have; I am living on a plantation belonging to one of my children.

By Mr. STEWART: (In answer to the witness' request.) I have not the copy here.

A. It does not make any difference; I would rather have seen it.

Q. 3. Where did you reside in the years 1868, 1869, 1870, and 1871?

A. In New York city.

Q. 4. Are you acquainted with the parties to this suit, complainant and defendant?

A. Name the parties.

96 Q. 5. Herman R. Baltzer, William G. Taaks, complainants, and the Raleigh and Augusta Air-Line railroad.

A. I do not know anything about the Raleigh and Augusta Air-Line railroad.

Q. 6. The Raleigh and Augusta Air-Line railroad, the Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins.

A. I know the Raleigh and Gaston Railroad Company; that is, I don't know its present formation now, but I know of it.

Q. 7. Simply know of it as a body corporate?

A. Yes.

Q. 8. The other defendants, Whitford?

A. Yes, sir.

Q. 9. You know John D. Whitford?

A. Yes, sir.

Q. 10. William J. Hawkins?

A. Yes, sir.

Q. 11. Do you know the complainants?

A. I know the complainants, Hermann R. Baltzer and William G. Taaks.

Q. 12. Are you or not the John F. Pickrell, the party named as party defendant in this suit?

A. Yes.

Q. 13. In 1868 in what business, if any, were you engaged, and where?

A. I was a broker and banker, as my sign indicated, in Wall street; I really forget the number.

Q. 14. You have stated that you are acquainted with the defendants, William J. Hawkins and John D. Whitford; will you please state when and where you made their acquaintance?

A. Governor Worth, of North Carolina, sent a commission here in 1867 or 1868, composed of Mr. Wiley, and probably some
97 other member of their literary board of North Carolina, and with them came a gentleman named Walter Gwinne, usually known as General Walter Gwinne. Walter Gwinne I have known all my life. He sent for me as soon as he arrived in New York, to aid him and the gentleman with him in selling their literary board lands. Well, General Gwinne had a parlor at the St. Nicholas Hotel, which he said was the headquarters of North Carolina people coming to New York at that time. At all events, a great many were there. He introduced to me very favorably John D. Whitford as the president of the Atlantic and North Carolina railroad. He told me that the road was in a wretched condition; that the people were in a wretched condition; that they had no money, and asked me as a favor to him, General Gwinne, to assist John D. Whitford in issuing some mortgage bonds. I made his acquaintance at that time.

Q. 15. Please look at the letter now shown you, a copy of which is made part of this question, marked "P., No. 1," headed "Newburn, May 13, 1868," addressed "John F. Pickrell, Esq.; my dear sir," and signed "John D. Whitford," and state if you received such a letter, if you know who wrote it, and when it was written, to the best of your knowledge and recollection.

A. It is signed John D. Whitford, dated May 13, 1868; the receipt is endorsed in my own handwriting, and Col. Whitford's name and date of the letter, etc., on it in my own handwriting. I received it in New York, and the handwriting is John D. Whitford's.

(Question and answer objected to by counsel for defendants, as inadmissible against the defendants other than John D. Whitford. Complainants' counsel states that the letter is introduced for the purpose of connecting the defendant, John D. Whitford, with the other defendants, and of showing his interest with the other defendants, and in the corporation defendants, and his agency therefor.)

Q. 16. Previous to the receipt of the said letter, "P., No. 1," had you or not any conversation with the said Whitford in refer-
98 ence to the contents thereof, or the subject-matter to which it refers, or with either of the other defendants?

(Objected to.)

A. Yes.

Q. 17. State, to the best of your recollection, with whom such conversation occurred, and what was the substance of the same.

(Same objection.)

A. In reference to a large North Carolina transaction, in which I would incur no risk, and in which John D. Whitford and others would be interested.

Q. 18. Please look at the letter now shown to you, dated "Raleigh, August 21, 1868," addressed "Mr. John F. Pickrell, New York; my dear sir," and signed "John D. Whitford," a copy of which is made part of this question, marked "P., No. 2," and state if you received such letter, and if you know the handwriting thereof, to the best of your knowledge and belief; and, if yea, state whose it is.

(Objected to.)

A. Yes; John D. Whitford's.

Q. 19. You received the letter from Mr. Whitford in due course of mail?

A. I received the letter, and endorsed its date myself, on the 21st of August, 1868; its date is the 21st of August.

Q. 20. And you received it in due course of mail?

A. Yes.

Q. 21. Did any one, and, if so, who, call upon you at your place of business in the city of New York in reference to said letters, or pursuant to the matters therein stated?

(Objected to.)

A. Yes; John D. Whitford and W. J. Hawkins.

99 Q. 22. Please state how soon after the receipt of said letter said Whitford and Hawkins called upon you, and state what business, if any, they proposed to you.

(Objected to.)

A. I could only say very shortly afterwards; they came to borrow one hundred thousand dollars, which Dr. Hawkins got from me, and Whitford's business with me was to make a contract jointly with me to build the Chatham Railroad, of North Carolina.

(Answer objected to by defendants' counsel.)

Q. 23. Was said call by said Whitford and Hawkins previous to the 1st of September, 1868?

A. It was about that time, a few days before; I think likely it was, but I don't know.

Q. 24. State what, if anything, in the nature of an agreement or contract for building the said road was discussed or considered at the interview between said Whitford and Hawkins and yourself.

(Objected to.)

A. We talked the matter over and agreed to make a proposal to build the road, and the proposal was made, and it was taken to Raleigh to be submited to the directors of that road.

Q. 25. (By Mr. FULLER:) Was that proposal in writing?

A. It was in writing.

(Answer to question 24 objected to.)

Q. 26. Have you the original of said proposal in your possession, and if you have will you please produce it?

A. I haven't it, and haven't any of the papers; I gave them all to Baltzer.

(Complainants' counsel now calls upon defendant to produce the proposition, if any was received by them; defendants' counsel states that the defendant has had no notice to produce said writing, and objects to any copy of the same being now introduced.)

100 (Complainants' counsel now calls upon defendants to produce said original paper, if any, in their possesion, and as the same is not produced, the complainants' counsel offers in proof a copy.)

Q. 27. Please look at the paper now shown you, dated New York, September 1, 1868: "To the president of the Chatham Railroad Company, William J. Hawkins, Esq.," and which reads as follows: "Sir: On behalf of myself and associates, namely, Messrs. Greenleaf, Norris & Company, and Charles Gould, Esq., I propose as follows: First. To contract to do the entire work of your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all the materials for the same at your engineer's estimates, provided they are not less than is allowed for similar work on the Western North Carolina road. Second. The above is based upon my having the contract to supply your road with all iron required, also all locomotives, spikes, chairs, and equipments generally at the prices agreed upon between us so soon as the condition of your company will permit of making such contracts. Third. In accordance with our various conversations while you were here, I further agree and propose to accept your State bonds at prices to be fixed by us for all supplies contained in proposition No. 2, and further to loan and supply you with all money you shall require from time to time for the purpose of your operations in building and supplying your road. (Signed) John F. Pickrell for self and associates; signed in duplicate," and which is added "accepted subject to approval of the board of directors. (Signed) W. J. Hawkins, president, Chatham Railroad Company;" and state whether or not, to the best of your recollection, knowledge, and belief the same is a correct copy of the written proposal made to the said Hawkins as president, stated in your former answer.

A. It is.

(Paper referred to marked complainant's Exhibit P. No. 3.)

Q. 28. Was or was not proposal P No. 3 written pursuant to the conversation between yourself and said Hawkins and
101 Whitford, which you have stated resulted from the letters of May 13th and August 21st, made part of your examination?

(Objected to.)

A. Yes.

Q. 29. At the date of said proposal did you or did you not advance said Hawkins as president any money; and, if yea, please

look at the paper purporting to be a check, now shown you, which I mark part of this question, marked P No. 4, dated New York, September 1, 1868, and signed "John F. Pickrell," which reads as follows:

"No. 466. NEW YORK, *September* 1, 1868.

"Metropolitan National Bank pay to the order of Dr. W. J. Hawkins, president, ninety-seven thousand two hundred and sixty-six and 67–100 dollars.

"$97,266.67. JOHN F. PICKRELL."

(Endorsed:) "W. J. Hawkins, pres't."

And state whether or not said check had any connection with said proposal, and, if so, what.

(Objected to.)

A. I discounted—I loaned Dr. Hawkins a hundred thousand dollars for four months, and charged him two and a half per cent. commission and interest on it; I kept my account in the Metropolitan Bank, or one of my accounts, and this is a check I gave him for the proceeds; it would be found, I think—I do not know how much interest, however, but two and a half per cent. commission on a hundred thousand dollars; that was the proceeds of a loan of a hundred thousand dollars.

Q. 30. Please look again at said check and state whether or not you are acquainted with the handwriting of W. J. Hawkins; and, if yea, if the endorsement thereon is in his handwriting.

A. I know his handwriting well, and that is his handwriting.

102 Q. 31. In the letter dated Raleigh, August 21, 1868, P. No. 2, occurs the following sentence: "Passing events or coming events enjoin us to act hastily; hence my contemplated visit to you in a few days;" please state what, if anything, was stated to you by the said Hawkins and Whitford, or either of them, as to the meaning of that expression.

(Objected to.)

A. It was the desire to speedily place these bonds.

(Answer objected to by defendants' counsel.)

Q. 32. Did or did not said Hawkins and Whitford, or either of them, state any reason why they desired to speedily place said bonds?

(Objected to.)

A. A great many of them were coming on the market, and there was a great anxiety on the part of holders to sell; the general belief, so far as I have any knowledge, amongst the parties in interest was that the bonds would be repudiated.

(Answer objected to by defendants' counsel.)

Q. 33. In referring again to your proposal of September 1, 1868, P. No. 3, I find the following among other matters stated: "1st, to

contract to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all the materials for same at your engineer's estimates." Did you, or did you not, ever receive any estimates, as therein provided, from the engineer of the Chatham Railroad Company, or through any of its officers or agents?

(Objected to.)

A. No.

Q. 34. Did you, or did you not, before writing said proposal, see, examine, or inspect any survey, profile, or engineer's estimate of any kind, indicating the character, amount, and cost of the work to be done as contained in said proposal?

103 (Objected to.)

A. No.

Q. 35. Did you, or did you not, ever see or examine such survey or estimate at any time, either before or after the writing of the said proposal?

(Objected to.)

A. No.

Q. 36. In said proposal, and referring to the work to be done according to estimates to be submitted, occurs the following proviso: "Provided, they are not less than is allowed for similar work on the Western North Carolina road." Had you, or had you not, ever seen or inspected the work on the Western North Carolina road, so as to know whether the same was similar to the work on the Chatham road, and the prices paid therefor?

(Objected to.)

A. I had not.

Q. 37. Then please be so good as to state by whom, if any one, you were advised of the work on the Western North Carolina road, or referred thereto, at the time you wrote said proposal?

(Objected to.)

A. Yes; I was told by both Dr. Hawkins and Mr. Whitford of the character of the work on the Western North Carolina road, that it was the most expensive road in the State.

Q. 38. You therefore stated the terms contained in your proposal from information received from Dr. W. J. Hawkins and John D. Whitford at the time you wrote the same; is or is not that so?

(Objected to.)

A. It is so.

Q. 39. Further referring to said proposal, the first paragraph of which reads as follows: "Sir: On behalf of myself and asso-
104 ciates, namely, Messrs. Greenleaf, Norris & Co." and Charles Gould, Esq., I propose as follows:" Please be so good as to state in what manner and for what purpose said Charles Gould and Greenleaf, Norris & Co. were or were not your associates.

(Objected to.)

A. The gentlemen named had agreed with me in writing to furnish me, upon my application, all the money I might require, upon satisfactory securities.

(Answer objected to by defendants' counsel.)

Q. 40. Was, or was not, the undertaking of said Greenleaf, Norris & Co. and Charles Gould in that behalf reduced to writing; and, if yea, will you produce the same if in your possession; or, if not, state what became of the same?

A. It was reduced to writing, and sent to Raleigh by John D Whitford.

(Question and answer objected to by defendants' counsel.)

Q. 41. And you have not the same in your possession?

A. I have not the same in my possession.

Plaintiff's counsel calls upon the defendant for the production of the paper so written and signed by the said Greenleaf, Norris & Co., and Charles Gould, in reference to the furnishing of money, which was delivered to the defendant Whitford, and by him sent to the Chatham Railroad Co., as testified by the witness.

No response is made to the call by the defendants.

Q. 42. State whether or not either Greenleaf, Norris & Co., or Charles Gould were, or agreed to be, your partners and associates in the building of the Chatham railroad.

(Objected to.)

A. They did not agree and were not my partners.

(Answer objected to by defendants' counsel.)

105 Q. 43. Now, please state who, if any one, was your partner or associate in the proposal to build said road; state the name of the party.

(Objected to.)

A. John D. Whitford was my associate and partner.

Q. 44. Was there, or was there not, others besides Whitford interested therein?

(Objected to.)

A. Whitford always said so.

(Answer objected to by defendants' counsel.)

Q. 45. On said proposal, and at the bottom of the same, is following endorsement: "Accepted, subject to the approval of the board of directors. W. J. Hawkins, president Chatham R. R. Co." Did you, or did you not, ever receive from the board of directors any resolution accepting said proposal?

(Objected to.)

A. I do not recollect of ever having received any resolution whatever from the board.

Q. 46. State what part you were to take, and what duties you were to perform in accomplishing the transactions mentioned in the said proposal?

(Objected to.)

A. I was to receive one-half the entire profits in building the road, for which I agreed to furnish them with the money they needed upon satisfactory security, it being expressly understood that I was to incur no risk whatever; there was a great deal of dissatisfaction shown by Whitford, in his portion of the proposed profits being only one-half.

(Answer objected to by defendants' counsel.)

Q. 47. Does or does not the statements contained in the
106 letter of May 13, 1868, P. No. 1, correctly indicate the real services and only services that were expected of you in the business matter proposed therein?

(Objected to.)

A. Yes.

Q. 48. At the time you wrote said proposal of September 1, 1868, had you, or had you not, ever seen or inspected personally the location of the Chatham railroad, or traveled over the line of the same; or did you or not in fact know where said road was located from personal inspection, either where it commenced or where it terminated?

(Objected to.)

A. I had no knowledge whatever of it.

Q. 49. Who, if any one, was to supervise the work on the said road under your said proposal?

(Objected to.)

A. Dr. Hawkins and John D. Whitford.

Q. 50. Did you, or did you not, ever employ or contract with any one to do the work on said road?

(Objected to.)

A. No.

Q. 51. Did you, or did you not, ever see or converse with any one engaged in or supervising the work on said Chatham railroad, except such conversation as you have stated you had with said Hawkins and Whitford?

(Objected to.)

A. No.

Q. 52. In the third paragraph of your proposal of September 1, 1868, occurs the following expression: "In accordance with our various conversations whilst you were here;" please state who is included in the words "our various conversations," and when and

where such conversations occurred previous to the date of said proposal.

(Objected to.)

107 A. Dr. Hawkins and Col. Whitford and myself, and principally, if not wholly, in my office on Wall street, in New York.

(Answer objected to by defendants' counsel.)

Q. 53. After writing said proposal of September 1, 1868, did or did not said Whitford and yourself take any steps towards purchasing iron for the Chatham Railroad Company? And if yea, please state what you did, severally and jointly, in that behalf.

(Objected to.)

A. The Colonel and myself made a contract with Schepeler & Co. and Baltzer & Taaks for ten thousand tons of iron rails for the Chatham railroad.

(Answer objected to by the defendants' counsel.)

Q. 54. Please look at the paper now shown you, and made part of this question, marked P. No. 5, commencing with these words: "This agreement, made this — day of ——, 1868, by and between Messrs. Schepeler & Co. and Messrs. Baltzer & Taaks, of the city of New York, parties of the first part, and John F. Pickrell and John D. Whitford, both also of the city of New York, parties of the second part, witnesseth," and state if you know the origin of said paper, the object for which it was written, and who dictated the terms thereof.

(Objected to generally and specially: first, because said paper is not executed by any one; second, because said paper speaks for itself; and, third, because there is no connection between John D. Whitford and the defendant corporation, or either of them.)

(Plaintiffs' counsel states that the paper is shown to the witness as a memorandum to refresh his memory as to the circumstances of making any contract for the purchase of iron for the said company, and to show the relation between himself and John D. Whitford in the making of the same as agents of the corporation defend-
108 ant, and to further connect the corporation defendant through its president, William J. Hawkins, and said Whitford, with the proposal signed by the witness on the first day of September, 1868.)

A. Yes; I know the origin was the making of a contract with these parties for ten thousand tons of iron rails. It is the project of a contract which was to be made by John D. Whitford and myself with the parties named, and the terms were dictated by Mr. Whitford and myself.

Q. 55. After said project and the contract was prepared, was it or was it not submitted to the Chatham Railroad Company through its president or to its president, said Hawkins? And if yea, please state when, how, and in what manner the same was done.

(Objected to.)

A. It was submitted to the Chatham railroad, and various alterations were made, at the instance of Dr. Hawkins and Col. Whitford.

Q. 56. Please look again at the said paper, and examine the pencil marks thereon, and state by whom, or at whose instance, the same were made, and whether or not they are in whole or in part the alterations and modifications you have spoken of on the contract for the purchase of the iron.

(Objected to.)

A. Some are made in my handwriting; others are not in my handwriting, but all the alterations and amendments made to this paper were made at the instance of Dr. Hawkins, to the best of my knowledge and belief and recollection.

Q. 57. At the time of the interviews of said Whitford and yourself with said Baltzer & Taaks, and at the time of preparing said paper, in what capacity, if any, did you and said Whitford, or either of them, represent to the said Baltzer & Taaks you were acting—whether on your own account or in a representative capacity?

(Objected to.)

109 A. I do not know that I made any representations; the whole tenor of our conversation in reference to this iron contract with Mr. Baltzer, with whom I had the most conversation, was that the company were to pay for the iron, as they did agree to afterwards.

(All of this answer after the word "representation" first occurring therein objected to by defendants' counsel as irresponsive and irrelevant.)

Q. 58. In the purchase of said iron by the said Whitford and yourself at the time the proposed contract was made did you or did you not state that you were acting as agents in the purchase of said iron for the Chatham Railroad Company, who was to provide the means to make good your contract?

(Objected to.)

A. I did not; but I expressly stated that the Chatham railroad was to provide means to pay for the iron.

Q. 59. Now, please look at the paper shown you, a copy of which is made part of this question, marked P., No. 6, commencing: "This agreement, made this eleventh day of September, one thousand eight hundred and sixty-eight, by and between Messrs. Schepler & Co. and Messrs. Baltzer & Taaks, of the city of New York, parties of the first part, and John F. Pickrell, also of the city of New York, party of the second part, witnesseth, and signed by the parties named, and state what said paper is, and for what purpose executed.

All of the above question objected to which enquires about the purpose for which the said paper was executed; as to those matters the paper speaks for itself.

A. It is a contract for ten thousand tons of iron; it was executed

for the purpose of furnishing ten thousand tons of iron to the Chatham railroad, to be received by them and paid for by them.

(Answer objected to by defendants' counsel.)

110 Q. 60. Now, please state what relation, if any, the said contract P., No. 6, had or bore to the project of the contract P., No. 5?

(Objected to.)

A. No. 6 was executed and intended, and I presume is, a copy of the project as amended.

Q. 61. Who, if any one, was acting as agent of the Chatham Railroad Company in the city of New York at the time said papers were written?

(Objected to.)

A. John D. Whitford.

Q. 62. Within your knowledge or information did or did not said John D. Whitford inform the complainants, Baltzer & Taaks, that he was the agent of said company?

(Objected to.)

A. To the best of my knowledge and belief I introduced Col. Whitford to them as agent of the company, and I know he acted in that capacity in making this contract.

(Answer objected to by defendants' counsel.)

Q. 63. Where did said Whitford keep his office at the time said contracts were being made?

(Objected to.)

A. He had no office in New York.

Q. 64. Where did he transact his business?

(Objected to.)

A. At my office, and I do not know—I say afterwards he became an inmate of my office regularly.

(Answer objected to by defendants' counsel.)

Q. 65. Where did Hawkins transact his business from and after the date of said proposal in reference to the purchase of iron supplies for said Chatham railroad?

(Objected to.)

111 A. I believe also at my office.

Q. 66. When said contract was signed was there or was there not anything stated, and if so what, as to its being signed by you alone, instead of yourself and said Whitford, as set forth in the project of the contract P., No. 5?

(Objected to, generally and specifically, first, because it is not competent to alter, modify, or explain the written contract by parol evidence; and, second, because the question is leading.)

A. I do not recollect anything special.

Q. 67. By the terms of said contract the price you were to pay Baltzer & Taaks for said iron is $79.36 per ton; was you or not to receive any advance price thereon from the company for said iron, or was the iron to be delivered to the company at the cost price named in the contract?

(Objected to.)

A. It was to be delivered at the price that it was bought for.

Q. 68. How, and in what manner, if any, were you to receive or make any profit, or derive any advantage from the purchase of said iron, and delivering the same to said company?

(Objected to.)

A. I had no profit in the iron; I simply acted as an intermediatory between the company and these parties selling the iron; I incurred no responsibility; all the parties so understood.

(Answer objected to, by defendants' counsel.)

Q. 69. This contract speaks of the use and delivery of certain bonds of the State of North Carolina; in the purchase of said iron was or was not said bonds, or any of them, present or exhibited to the parties at the time of making said contract?

(Objected to.)

A. No.

112 Q. 70. Within your knowledge or information, had or had not the bonds therein mentioned been issued by the State of North Carolina?

(Objected to.)

A. They had not been.

Q. 71. What representations, if any, were made by the said Whitford or yourself to the complainants as to the character and value of said bonds?

(Objected to.)

A. I do not recollect making any representations whatever.

Q. 72. Did you or not tell the complainants what sort of a bond they were going to get, or did they take the bond without any knowledge whatever as to the character thereof?

(Objected to.)

A. Regular North Carolina bonds were to be deposited by the company as collateral security for the purchase of the iron.

(Objected to the answer, by defendants' counsel.)

Q. 73. In the project of the contract P., No. 5, it was provided that the bonds therein mentioned were to be deposited with the United States Trust Company; will you state at whose instance, and for what reason, if any, the depository of the bonds was changed from the United States Trust Company to the Continental National Bank?

(Objected to.)

A. At the instance of Colonel Whitford, who kept an account there.

Q. 74. By the third clause of the said contract of the 11th of September, 1868, it is provided that "the iron is to be paid for as follows: The party of the second part is to deposit with the Continental National Bank, on or before the execution of this agreement, such an amount of the bonds of the State of North Carolina
113 as will at the market price, on the day of deposit, be equal to the whole purchase-money for the said ten thousand tons of iron, and fifteen per cent. in addition thereto, which margin of fifteen per cent. is to be kept good until the full performance of this contract;" was or was not such deposit of bonds made as stated in this contract with or before the execution thereof?

(Objected to.)

A. The bonds were deposited, but I do not know the precise date of the deposit.

Q. 75. Who were they deposited by?

(Objected to.)

A. By John D. Whitford.

Q. 76. It is further provided, in the third clause of the said contract, that "notice shall be given to the party of the second part, or his personal representatives, of the arrival of any ship containing iron, and he or they are to be ready to receive the same whenever the ship is ready to discharge; in the event of the death of the said party of the second part, and no appointment of a personal representative at the time notice is required to be given, such notice may be given to the said William J. Hawkins by a letter addressed to him at the city of New York;" state why the name of said Hawkins is substituted as your representative in the event of your death in the manner provided.

(Objected to.)

A. He was the person I represented; he was the person to receive the iron; I was merely receiving it for him.

Q. 77. It is further provided in said contract as follows: If at any time the party of the second part, or his personal representative, or the said William J. Hawkins, or his attorney, or the survivor of them, shall refuse to join in drawing an order for the amount due for the iron as aforesaid, the parties of the first part may retain the warehouse receipt, or bill of lading, or ship's delivery order, and
114 may sell the iron for which payment has been refused at any time after five days' notice of intention to sell, either at public or private sale, for and on account of the party of the second part, or his personal representative, who shall be liable to reimburse the parties of the first — any loss on such resale, such notice of intention to sell to be given by depositing the same in the general post office, in the city of New York, addressed to the party of the second part, or his personal representative, or said William J. Hawkins, in the event of the death of the party of the second part and the non-appointment

of any personal representative at said city of New York." Please state who was to bear the loss that might be sustained in the event of the not signing of the order as therein provided, and the iron being resold according to the conditions of said agreement,

(Objected to, generally and specially because the question calls for an answer the tendency of which is to construe the contract where the question is unambiguous, or to alter or modify the terms of the contract as contract in the writing.)

By the plaintiffs' counsel: The question does not seek to construe the contract, nor is it so intended, but is asked the witness to meet an ambiguity in the contract as to whether the loss in the event of such sale for refusal to receive and pay would devolve upon him solely, or upon any one else, or jointly with himself; which in no manner contradicts, varies, or alters the contract as between Baltzer and Taaks and Pickrell and others on whom such loss would fall.

A. The Chatham railroad, I presume.

Q. 78. Was or was not you individually to bear or sustain any loss in any event, as between yourself and said company?

(Objected to, as to Q. 77.)

A. I was to stand no loss whatever.

Q. 79. By the sixth clause of said contract it is provided as follows: "It is understood that the said bonds are deposited as a fund out of which to pay for the said iron, and that the parties of the first part are to have a lien on the same for the faithful performance of this contract on the part of the party of the second part; but it is also understood that the parties of the first part do not look solely to the said bonds for payment, and if for any reason they should at any time fail to constitute a sufficient fund for payment, the parties of the first part are, nevertheless, to be paid for iron at the same rates and times as hereinbefore provided;" please state if at the time of the making of said contract any special reasons were assigned between the parties for the insertion of this clause; and if so, state what they were.

115

(Objected to, as to Q. 77.)

A. I do not recollect.

Q. 80. At the time of the signing of the said contract, P., No. 6, was it or was not understood that there was to be a further current contract signed before the same went into effect. And if yea, please state to the best of your knowledge and recollection why such further contract was to be signed.

(Objected to, as the writing will speak for itself.)

A. There was to be some additional paper or contract signed to meet some views, as stated by Dr. Hawkins; I cannot tell particularly what now.

Q. 81. Please look at the paper now shown you, and made part of this question, marked P., No. 7, and state whether or not said paper is one of which you have any knowledge.

Complainants' counsel states that the complainants' original being on file at Greensborough, a copy furnished by the clerk of the court is offered.

(Question objected to, generally and specially, because it is not the original paper.)

Counsel for the complainants, in view of the objection made by the counsel for the defendant, states that he will substitute or compare the paper with the Exhibit C, made part of the sworn deposition of William J. Hawkins, taken in this cause.

A. Yes.

116 Q. 82. And if yea, state whether or not it is the further contract spoken of in your former answer.

(Objected to.)

A. I believe it to be.

Adjourned to April 4, 1879, at 10 o'clock a. m.

United States Circuit Court, for the Western District of North Carolina. In Equity.

117 HERMAN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

SATURDAY, *April* 5, 1879.

Present: Joseph B. Stewart, Esq., counsel for complainants; T. C. Fuller, Esq., and E. R. Robinson, Esq., counsel for defendants.

JOHN F. PICKRELL, examined on behalf of complainants by Mr. STEWART, deposes and says:

Q. 83. Referring again to the sixth clause of the contract of September 11, 1868, Exhibit P., No. 6, wherein it provided that if the bonds at any time prove to be of insufficient value, or "to constitute a sufficient fund for the payment, the party of the first part are, nevertheless, to be paid for the iron at the same rates and times as herein provided;" will you please state in what, and how, and by whom they were to be paid?

(Objected to.)

A. The iron was to be paid for by the company.

Q. 84. That is, I understand you to say, that if the bonds did not pay for it as contracted to be delivered and appropriated, that the company was to pay for the iron in money, or other matter of value; is that so?

(Objected to, generally and specially, as a leading question.)

A. Yes.

Q. Were or were not the bonds mentioned in the said agree-
118 ment at the time of the signing of the same, or at any other time, placed in your individual possession or control?

A. No.

Q. 86. Did you or did you not at any time ever had said bonds in your possession?

A. Never.

Q. 87. Why was it necessary to execute the concurrent agreement of September 11, 1868, Exhibit P., No. 7, signed by W. J. Hawkins, president Chatham Railroad Company?

(Objected to, as the writing speaks for itself upon this point.)

A. In order to carry out the previous contract, I presume.

Q. 88. Without the execution of the concurrent contract, Exhibit P., No. 7, and you not having the bonds in your possession, as you have stated, could you or could you not have paid for the iron?

A. Certainly not.

Q. 89. Now, that the contract was executed, was there or was there not any iron delivered by Baltzer & Taaks pursuant thereto?

A. Yes.

Q. 90. At what dates and in what amounts was said deliveries made; and please look at the paper now shown you, marked P., No. 8, and state whether the deliveries and dates marked on said paper are correct.

(Objected to the paper marked P., No. 8, being received in evidence.)

A. I believe this [to] be correct.

Q. 91. The first delivery marked on said paper P., No. 8, was of October 12, 1868, of T.630.6.2.26, and amounting, at $76.36 per ton, to $50,023.51; was or was not that the amount paid to Baltzer & Taaks; and, if yea, by whom, and in what manner?

(Objected to.)

119 A. It was paid by the company with its own money through me.

Q. 92. The next delivery was as shown by said Exhibit P., No. 8, November 2, 1868, on which day three deliveries were made; delivery No. 2 being for T. 770.6.1.3, at $79.36 per ton, amounting to $61,132.12; delivery No. 3 was T. 330.16.0.15, in currency, at $76.36, amounted to $26,250.82; delivery No. 4 was for T. 1,004.9.0.18, in currency at $79.36, amounted to $79,713.79; making the total for iron delivered under said contract on the 2d of November, which amounted to $167,098.73; was or was not said iron paid for in whole or in part on the delivery, to wit, November 2, 1868?

A. I presume it was; I want to explain. This is not my paper; I believe it to be correct; it was certainly paid for on the day on which it was delivered; if this delivery is correct, then it was paid for on that day; but I am taking another paper now not my own; I presume it is correct.

Q. 93. Look at the three papers now shown you, marked respectively P., No. 9, P., No. 10, and P., No. 11, and state whether or not you recognize said papers; and, if yea, whether they refresh your memory as to the dates of delivery of said iron, and the payment thereof.

A. Yes.

Q. 94. Are those the papers which evidenced the delivery of said iron at the time the same was made, to the best of your recollection?

A. These papers show the dates of the receipt by me of the iron for account of the company.

(Answer objected to, by defendants' counsel, as not responsive to the question.)

Q. 95. For and on whose account and use was the iron described in said papers P., No. 9, P., No. 10, and P., No. 11 received by you?

(Objected to generally and especially, because the papers speak for themselves.)

120 A. For account of the Chatham Railroad Company.

Q. 96. You have stated that delivery No. 1 was paid for in cash out of the company's money through you; now please to state in what manner, and by whom the payment was made for the deliveries Nos. 2, 3, and 4, amounting to $167,098.73.

A. In the bonds of the State of North Carolina.

Q. 97. Was the whole payment made in bonds, or part in bonds and part in money?

A. Wholly in bonds, I think; but certainly principally so.

Q. 98. By whom was said payment made?

A. By the Chatham Railroad Company through me.

Q. 99. Will you now please look at the papers purporting to be bonds of the State of North Carolina now shown you, numbered respectively 2751 to 2800 inclusive, and 2801 to 2850 inclusive, and 2951 to 2990 inclusive, of the par value of a thousand dollars each, dated October 1, 1868, and state whether or not the same are the bonds, or a portion of the bonds delivered to Baltzer & Taaks in payment of said iron deliveries No. 2, 3, and 4 under said agreement of September 11, 1868?

A. I believe they are.

The bonds are put in proof by their number, without any further designation, and the complainant will produce the same on the trial of the cause.

Q. 100. Do you know from what place or depository, if any, said bonds were drawn at the time of their delivery to Baltzer & Taaks?

A. From the Continental Bank.

Q. 101. Are they the bonds described in the two papers or agreements signed the 11th of September, 1868, or a part of the same?

A. Yes.

Q. 102. Do you know, and, if yea, please state when said bonds were deposited in said Continental Bank; that is, how long after the same were issued by the State of North Carolina?

(Objected to.)

121 A. I do not know.

Q. 103. At the time of such delivery was said bonds sold on the brokers' board in New York?

A. Certainly not; they were sold to Baltzer & Taaks.

Q. 104. Were or were not the bonds of the State of North Carolina of this issue quoted on the brokers' board at the time of such delivery?

A. They were.

Q. 105. How long had they been so quoted?

A. I cannot say without referring to the prices current of the day.

Q. 106. How long after such delivery did they continue to be quoted on the market?

A. Only a very few days.

Q. 107. Why did they cease to be quoted?

(Objected to, as irrelevant.)

A. They were thrown off the list whilst I was in Raleigh, North Carolina; I understood there in consequence of the action of the Board of Trade at Wilmington, North Carolina.

Q. 108. From whom did you understand such to be the case?

A. Dr. Hawkins.

Q. 109. Is Dr. Hawkins one of the defendants in this suit?

A. Certainly; yes, sir.

Q. 110. After said bonds were thrown out of the brokers' board for the reason you have stated, did they have any other sale in the market of New York?

A. Well, everything in New York has some price; I presume private sales were made at some price or other, although I do not know; they had no price at the regular market for such securities.

Q. 111. What, if anything, did Baltzer & Taaks do in reference to said bonds after they lost their value in the market?

(Objected to.)

122 A. I do not know what they did, other than to rely upon my daily statement to them that the Chatham railroad would make their bonds good.

(Answer objected to by defendants' counsel.)

Q. 112. Did or did not Baltzer & Taaks offer to return the bonds and request payment for their iron at the market price thereof in money?

(Objected to.)

A. Oh, yes.

Q. 113. While you were in Raleigh and at the time said bonds were thrown off the market, what conversation, if any, did you have with the Chatham Railroad Company, or its officers, or any of them, in reference thereto; and what was said on the subject; please state to the best of your recollection?

(Objected to.)

A. I stated to Dr. Hawkins that Colonel Whitford, who was in New York, would be required to deliver on the sales that I had made for the account of the company bonds of a previous issue which

were held by the company, but not affected by the action of the Stock Exchange.

Q. 114. What did Dr. Hawkins say in reply to your statement?

(Objected to.)

A. He said that the bonds that were still upon the board had been given to them by the Legislature to build a certain part of his road, and that Colonel Whitford had no right and should not be allowed to make the substitution, or words to that effect.

Q. 115. To what particular bonds do you now refer as being specially in the hands of Col. Whitford, as stated by Dr. Hawkins?

A. A former issue of I think twelve hundred bonds.

Q. 116. In whose custody and control were the said bonds
123 in the city of New York you have mentioned at the time of the conversation with Dr. Hawkins?

A. The twelve hundred bonds were in the hands of Col. Whitford; they were not in my hands.

Q. 117. Those bonds, I understand you to say, were dedicated to building a particular portion of the road as claimed by Dr. Hawkins?

(Objected to.)

A. I was told so.

Q. 118. Were you advised what portion of that road it was?

A. I do not recollect.

Q. 119. Was it, or was it not, the first thirty miles of the road out of Raleigh?

A. I cannot say.

Q. 120. Did you return to New York after receiving the information that said bonds had been expelled from the stock board; and, if yea, did you see Baltzer & Taaks upon your return?

A. I returned as soon as arrangements could be made to send me off from Raleigh, which was done by a special train, and I did see Baltzer & Taaks immediately on my return.

Q. 121. Did, or did not, Baltzer & Taaks then, at that time insist upon the return of the bonds and payment for their iron?

(Objected to.)

A. Yes.

Q. 122. Please look at the telegram now shown you, dated Raleigh, N. C., December 17, 1868, and addressed Colonel John D. Whitford or John F. Pickrell, 60 Wall street; "our bills passed to-day both houses all right now and exactly as copy sent you yesterday; now our bonds will go; the January interest will be paid, W. J. Hawkins;" and state whether you received such a telegram; and, if yea, state in reference to what bills and what transactions said telegram refers.

(Defendants' counsel objects to the question because this
124 paper purports to be a copy of a telegram, the original of which is not produced, or its loss satisfactorily accounted for; it is not signed by W. J. Hawkins in his proper handwriting, and is not otherwise identified as coming from him.)

(Complainant's counsel states that the original of the telegram is in the possession of the defendant, W. J. Hawkins, who can produce the same if he chooses, or went into the possession of the Western Union Telegraph Company, where it still remains, if not destroyed; and that the telegram now presented, if received by the witness, is the original as to him, and was sent in the usual way of telegrams.)

(Telegram marked Complainant's Exhibit P. No. 12.)

A. I did receive this telegram. It referred to relief bills for the Chatham railroad. I call them relief bills—amended bills—something that would make their bonds a good delivery.

Q. 123. Do you mean the bonds described in the contract of September 11, 1868, and which had been ejected from the brokers' board as you have testified?

A. I do.

Q. 124. Now look at the paper purporting to be a telegram, now shown you, dated Raleigh, N. C., March 18, 1869, to John F. Pickrell, 60 Wall street. "B. returned this morning. Tell Baltzer keep quiet for a day or two. Matters progressing favorably. John D. Whitford;" and state whether or not you received such telegram, and, if yea, then state to what matters it referred.

(Defendants' counsel objects on the same ground as contained in his objection to Q. 122.)

A. I did receive this telegram. It refers to bonds that were used by the Chatham railroad.

(Telegram referred to marked Exhibit P. No. 13.)

Q. 125. To whom or what does the letter "B" refer to in the commencement of said telegram as having returned?

(Objected to.)

125 A. To Dr. Hawkins, the president of the Chatham railroad.

Q. 126. Was it arranged or agreed between yourself and any one, and, if so, who, and when that letter "B" should be understood between you as describing Dr. Hawkins, the president of the Chatham Railroad Company?

(Objected to.)

A. It was arranged between Col. Whitford and myself that in our correspondence all reference to Dr. Hawkins should be made by using the letter "B." I do not know when that arrangement was made, but at the beginning of our transaction in reference to building the Chatham railroad—connected with building the Chatham railroad.

Q. 127. Was there, or not, any reason assigned for why it was desirable that Dr. Hawkins' name should not be used?

(Objected to.)

A. None whatever, excepting that we wanted to keep our busi-

ness to ourselves; I do not know that Dr. Hawkins was aware of any such arrangement.

Q. 128. What was the business that you desired to keep thus privately between yourself, and in which Dr. Hawkins' name should not appear, and for which the letter "B" was substituted?

(Objected to.)

A. The business that we were then transacting together—building the Chatham railroad.

Q. 129. State, to the best of your knowledge and recollection, to what the words "Tell Baltzer keep quiet for a day or two; matters progressing favorably" applies, as used in the said telegram.

(Objected to.)

A. It means that the Chatham railroad would speedily pay him for his iron, or substitute good bonds for the trash that they had given him.

126 Q. 130. Will you now please look at the letter dated Raleigh, January 8, 1869, addressed "Mr. Pickrell: My dear sir," and signed "Yours truly, John D. Whitford," and made part of this question, marked Exhibit P., No. 14, and state whether you know the writing in said letter, and whether you received the same?

(Objected to.)

A. I know the handwriting; it is from Col. Whitford, and I did receive it.

Q. 131. Please further examine said letter, and state, to the best of your knowledge and recollection, to what subject-matter it refers.

(Objected to.)

A. It relates to the constitutionality of the issue of bonds by the State to the Chatham railroad, then being argued before the supreme court of North Carolina.

Q. 132. Please look again at the postscript of said letter, which reads as follows: "Mr. Pickrell, you had better pay the Tredegar bill. If you desire I will send you an order on Greenleaf, Norris & Co. for the amount, or you can pay it and I will give it on my return, just as you like. Hawkins would have sent the money, but I deem it best to keep the matter in your hands, as I didn't wish any bill for the article in the hands of his treasurer, or except from you as contractor, with your profits added." Please state what the Tredegar bill was, and to what contract is referred as existing between yourself and Whitford and Hawkins.

(Objected to.)

A. General Robert Anderson, of Richmond, the president of the Tredegar works, or his treasurer, or clerk, called upon me at my office in New York and presented a bill for chairs and spikes, to be used on the Chatham railroad, amounting to about five thousand dollars, as well as I recollect, and asked me to pay it; I an-

127 swered that I knew nothing about it; I had never bought any chairs and spikes, and I had no orders from Dr. Haw-

kins to pay any such bill, and declined to pay it; I believe I afterwards did pay the bill, but certainly not with my own money; if I paid it I was furnished the money to pay it, or else refunded the money if I did pay it; the contract was for building the Chatham railroad, not the contract for the iron, or the contract or project of the contract, to build the Chatham road, or proposal of September 1, 1868.

(Answer objected to by defendants' counsel.)

Q. 133. You have stated that the bonds that the State issued for the use of the Chatham Railroad Company were ejected or excluded from the brokers' board soon after the same had been quoted thereupon; will you please state, to the best of your recollection, about what time that occurred, whether in the month of November or December, 1868?

A. I cannot say unless I am allowed to refer to my papers; I cannot carry these dates.

Q. 134. At the time, or immediately thereafter, the exclusion of said bonds from the brokers' board, did or did not Dr. Hawkins, as president of the Chatham Railroad Company, direct you to turn over the funds in your possession to John D. Whitford; and, if yea, please state when such occurred, and about the amount of funds, if any, transferred by you to said Whitford?

(Objected to.)

A. Again, I cannot state as to dates; Dr. Hawkins did direct me to turn over the funds of the Chatham railroad in the hands of Greenleaf, Norris & Co., from the sale of bonds, and the sum controlled by me——

By Mr. FULLER:

Q. 135. Was that direction in writing?

A. I believe not, sir; I know it was not; I believe it was not.

A. (Witness further answering Q. 124.) Amounting to between three and four hundred thousand dollars; I did transfer the amount to John D. Whitford, agent, by a simple order on Greenleaf,
128 Norris & Co., to transfer the account; I did not know the precise amount, and therefore pursued this plan to transfer the entire account; I never used for my own business a penny of the company's money; my account for the sale of bonds for account of the company was simply the account of Greenleaf, Norris & Co., made to John D. Whitford, the agent of said company.

(Answer objected to by defendants' counsel.)

Q. 136. Was or was not the precise date of such transfer Thursday, December 3, 1868?

(Objected to.)

A. I cannot say as to date.

Q. 137. Will you please look at the book now shown you, and the

entries thereupon, and state whether the same will refresh your memory as to date?

(Objected to, as the book counsel holds in his hands and shows to witness has not been proved or identified in any way.)

Counsel for the complainants states that the book is the daily blotter of Greenleaf, Norris & Co., and that he will prove its identity by a clerk of the office, who will be sworn immediately after this witness, or, in the event of his failing to do so, he will withdraw the question now to facilitate the examination, as the clerk referred to cannot be examined previous to four o'clock in the day.

A. That will not.

Q. 138. At or about the time of transferring said money from your account to said Whitford as agent, was there or was there not any bonds transferred likewise?

(Objected to.)

A. There were bonds; the whole account was transferred, bonds and money.

Q. 139. Now, please look again at the blotter referred to, and
129 see if the same advises you of the date of the transfer of said money by a transfer of the bonds to which you have referred, forming part of your account at the same time?

(Objected to.)

A. I see from what is said to be Greenleaf, Norris & Co.'s blotter, under date of December 3, 1868, the entry of a check drawn by John D. Whitford upon Greenleaf, Norris & Co. for three hundred thousand dollars; I know that this check was drawn on the same or the day subsequent to my transfer of the account of the said Whitford, agent, and I was told, and believe it to be the case, that the three hundred thousand dollars and other moneys drawn within a day or two of the third of December, 1868, was invested in United States securities for account of the Chatham railroad by said Whitford, agent.

(Answer objected to by defendants' counsel.)

Q. 140. On said blotter appears the following entries: "Received from account of J. F. Pickrell, five hundred thousand dollars, North Carolina F. M., from account of John F. Pickrell, $1,000 each;" and on the same date John D. Whitford is credited $500,000, North Carolina bonds, by account of John F. Pickrell; and a further entry, "John D. Whitford, agent, for his check on us, $300,000;" and on the same page, "John D. Whitford, agent, draft for John D. Whitford, agent, $309;" and on the same blotter, under date of Saturday, December 5, 1868, appears the further charge: "John D. Whitford, agent, $35,000," and on the same date, "John D. Whitford, agent, $7,000;" and on Tuesday, December 8, 1865, "John D. Whitford, agent, $789.56;" and "John D. Whitford, agent, exchange for ———;" on Saturday, December 26, "John D. Whitford, agent, bonds sent to Baltimore to John D. Whitford, agent;" and on the

same day, "Lamson & Smith, $1,000 North Carolina bonds, John D. Whitford, agent, $1,000 each;" please state whether or not you have any knowledge of said transactions, and if yea, please state to what they refer.

(Objected to, generally specifically; first because the said
130 book has not been identified; second, because the witness does not appear ever to have seen said book before; was not privy to the entries which have been read to him, and he is not called on to look at said book for the purpose of refreshing his recollection; and as it does not appear that the witness has any recollection outside and independently of the book itself.

Counsel for complainant states again that the book is the blotter from the office of Greenleaf, Norris & Co., on which the current transactions named were entered as they occurred from day to day, and that he will connect the same with Whitford & Pickrell, and their transactions, by the testimony of the clerk of the house, who made the entries and had knowledge of the entries, and to identify the book, or will withdraw the question and answer; and only makes the presentation to the witness, while on the stand, to save time, and in order not to recall him after the clerk of the house has sworn. As to the inspection of the book, the counsel offers to open the book again, and go over again, if the counsel for the defendants desire it to be done.

A. I have no knowledge whatever of John D. Whitford's management of the account after I transferred the money and bonds to him, about the 1st of December, 1868, except as I have heretofore stated in my previous answer.

Q. 141. Now, will you please state in what capacity you held or had charge of said account of money and bonds previous to the transfer to the said Whitford, as agent of the Chatham Railroad Company?

(Objected to.)

A. I held them intact, without the appropriation or transfer of one penny, for account of the Chatham railroad.

Q. 142. Were or were not said moneys and bonds transferred to the said Whitford to control and hold in the same manner that you held them previous to your transfer?

(Objected to.)

131 A. I was told so by Colonel Whitford and Dr. Hawkins, and so believed.

Q. 143. Was there any reason given by said Whitford or Hawkins, or either of them, or communicated to you in any way, why such transfer of the funds was made immediately after said bonds being excluded from the stock market?

(Objected to.)

A. No explanation was given and none was asked for. they were transferred as a simple business transaction; the funds held by me

for the Chatham railroad was transferred upon the order of the president to their New York agent, John D. Whitford, as a matter of course, when required.

Q. 144. From what source was said three hundred thousand dollars and upwards so held by you for the said Chatham Railroad Company derived?

(Objected to.)

A. From the sale of bonds of the State of North Carolina issued to the Chatham railroad.

Q. 145. For what purpose was said money, or the proceeds of said bonds, placed in your hands by the Chatham Railroad Company?

A. To provide money to pay for ten thousand tons of iron, and so understood by me at that time.

(Question and answer objected to by defendants' counsel.)

Q. 146. At the time that Baltzer & Taaks tendered back the bonds, and demanded the money, or the balance due thereon, on said delivery, Nos. 2, 3, and 4, of iron, under date of November 2, 1868, was there or was there not sufficient money, as the proceeds of said bonds, on hand to pay the amount, had it been so applied?

(Objected to.)

A. Yes.

Q. 147. Had you been bound by virtue of any contract to
132 build or construct the railroad of said Chatham Railroad Company, or to furnish absolutely the said ten thousand tons or iron upon your own responsibility, would you or would you not have transferred said $386,000, or any other sum, to said Whitford, agent, by the order of said Hawkins, after the said bonds specified in said agreement of September 11, 1868, had been rejected from the brokers' board as valueless?

(Objected to, generally, because this question is leading and argumentative.)

A. That I will answer; as a business man, knowing fully what I was doing, understanding every step of the business that I had contracted to do with the Chatham railroad, Hawkins and Whitford if I had supposed that I was to be held individually responsible for damages on this contract, I certainly would have consulted my lawyer before I would have given away the means that this road furnished me for the purpose of building the road; I had, at the time I made the transfer, every assurance that one man could give another that Baltzer & Taaks would be satisfactorily arranged with; I made the point; it was so understood by the parties, Whitford and Hawkins, and so agreed to by them.

(Answer objected to by defendants' counsel.)

Q. 148. You have stated that the contract of September 11, 1868, was terminated after the said bonds were rejected in the brokers' board; will you state, to the best of your recollection, how soon after such contract was suspended?

A. I understand the contract of the 11th of September to be the iron contract.

Q. 149. Yes; to the iron contract.

A. It was suspended soon after the bonds were thrown off the board; I cannot tell the date; if necessary, I will furnish the written agreement to terminate; that I think I can do, but I cannot recollect the date.

Counsel for defendants asks that the witness will furnish such agreement, and that it may be made part of this answer and marked Exhibit P., No. 15.

133 Counsel for both parties agree that the witness shall, if he can possess himself of the same, furnish the paper and add it at any other time.

Q. 150. After said contract for the purchase of iron of the 11th of September, 1868, has been suspended, to wit, on or about the sixth day of March, 1869, was there or was there not a further agreement executed between yourself and the Chatham Railroad Company?

(Objected to, generally and specially, upon the ground of irrelevancy.)

A. Yes.

Q. 151. Have you the original of said agreement in your possession, and, if yea, will you produce the same as part of your examination?

(Objected to, as above.)

A. I do not know that I have the original; if I have I will produce it.

Such paper to be marked Exhibit P., No. 16.

Q. 152. Please look at the paper now shown you and made part of this question, and marked Exhibit P., No. 17, and state whether or not the same, to the best of your knowledge and belief, is a copy of the said contract.

A. It is.

Q. 153. The first paragraph of said agreement reads as follows: "North Carolina, Wake county; agreement between the Chatham Railroad Company and John F. Pickrell & Co., of New York, made in pursuance of primary contract, dated December 1, 1868, this March 6, 1869;" was there, or was there not, any other agreement made or executed between yourselves and the Chatham Railroad Company in reference to building its road pursuant to your proposal of September 1, 1868, than the paper now shown you?

A. No.

134 Q. 154. Please state at whose instance and request said agreement of March 6, 1869, was executed.

A. Dr. Hawkins, the president of the Chatham road.

Q. 155. You have stated that you never did or performed any work whatsoever in the construction of said road, and never employed any agent whatsoever to do work under your proposal of September

1, 1868; I now ask you to state whether you ever did or performed any work, or employed anyone to do or perform any work, under said agreement of March 8, 1869, now shown you?

(Objected to.)

A. No.

Q. 156. Did you yourself do, or cause to be done, deliver or cause to be delivered, any engines, materials, or supplies for working said road under said contract of March 6, 1869?

A. I ordered the engine, "Kemp P. Battle," built by direction of Dr. Hawkins, from a particular machine shop—the Rogers establishment—by direction of Dr. Hawkins, who provided the money to pay for said engine; I answer all of the rest of the question in the negative; that is all that I recollect of.

Q. 157. One of the paragraphs in said agreement of March 6, 1869, reads as follows: "In consideration of the faithful performance of this contract, the Chatham Railroad Company agree to pay, from time to time, as the work progresses, $611,000 said Pickrell & Co., accepting bonds of the State at sixty per cent., as per statement rendered;" did you, or did you not, at the time have or accept, or did you ever accept and have in your possession, any State bonds to the amount of $611,000 in your hands, or accept the proceeds thereof at sixty cents in the dollar, from and after the date of said agreement, to wit, March 6, 1869?

(Objected to.)

A. I never accepted, at any time, any bonds from the Chatham railroad, at any price, as a part of my contract.

135 Q. 158. The concluding paragraph of said contract reads as follows: "This contract includes work already done and materials, stock, etc., furnished heretofore, for which receipts have been given and payments made by the parties." Will you please state whether or not you had, previous to the date of said contract, given, received, or signed any vouchers to or with the Chatham Railroad Company on account of the articles furnished and work done, as described in said clause?

(Objected to generally, and on the special ground that it tends to vary and contradict the terms of the written contract solemnly entered into by the witness.)

Plaintiffs' counsel states that the question is asked to enable the witness to state the fact as between himself and the other contracting party, to wit, the Chatham Railroad Company, whether in point of fact he did or performed the labor and furnished the material described in said contract, or whether in point of fact the labor and material was done and performed by others, which, as between himself and the company, it is competent for him to do.

A. Yes.

Q. 159. Please state what work you had done or caused to be done, or what material you had furnished or caused to be furnished, under said contract of September 1, 1868, described in said clause, except

the iron under said contract of September 11, 1868, and the order of the engine "Kemp P. Battle," mentioned in your preceding answer.

A. None.

Q. 160. Please look at the telegram dated Baltimore, Md., April 19, 1870, addressed to John F. Pickrell, 42 Broadway, N. Y.: "We cannot go over before to-morrow evening—John D. Whitford," and state who were the "we" therein referred to; state whether you received said telegram, and to what matter said telegram related.

(Objected to upon same ground as objection to question 122.)

(Paper marked "Exhibit P., No. 17.")

136 A. I do not know anything about it at all; I have no doubt I received it, but I know nothing about it.

Q. 161. Please look at the telegram dated Raleigh, N. C., June 24, 1870, addressed "John F. Pickrell, 42 Broadway; Clews' bonds necessary; (telegram torn, but believed to express "to get;") mortgage bonds here; value them nominally. Sloan will see you Monday. John D. Whitford," and state whether you received such telegram, and if you know to what subject-matter it relates.

(Objected to, as to question 122.)

A. I did receive the telegram; it related to business of the Wilmington, Charlotte and Rutherford railroad.

Q. 162. Please look at the telegram now shown you, marked "Newbern, N. C., July 7, 1870," addressed "John F. Pickrell, 42 Broadway. Will remain as desired; H. also thought I better remain; (signed) John D. Whitford," and state if you received said telegram, and to what the same refers.

(Objected to, as to question 122.)

(Telegram marked "Exhibit P., No. 19.")

A. I have no doubt I received this, but I do not know what it refers to.

Q. 163. Please look at the telegram now shown you, marked "Raleigh, N. C., August 10, 1870," addressed "John F. Pickrell, 42 Broadway. Checked on you to-day for five thousand dollars; have written John D. Whitford," and state whether you received said telegram, and to what the same refers.

(Objected to, as to question 122.)

(Telegram referred to marked "Exhibit P., No. 20.")

A. I have no doubt I received the telegram, and the money was advanced either on account of the Williamson and Tarbora railroad or to pay for some real estate bought in North Carolina.

137 Q. 164. Please look at the telegram now shown you, dated Raleigh, N. C., May 25, 1871, addressed "John F. Pickrell, 42 Broadway; have been absent since Friday last; will hear from me respecting iron matters in due time; John D. Whitford, agent;" and state whether you received such telegram, and to what the same refers.

(Telegrams referred to marked "Exhibit P., No. 21.")

(Objected to, as to question 122.)

A. I received the telegram, but have no recollection of what it refers to.

Q. 165. Please look at the letter now shown you, dated Raleigh, N. C., March 20, 1869, directed "Mr. Pickrell, my dear sir," and signed "John D. Whitford," made part of this question, marked "Exhibit P., No. 22," and state whether you received said letter, in whose handwriting the same is, and to what the same refers?

A. I received the letter; it was written by Colonel Whitford, and refers, in part, at least, to a cargo of railroad iron that I bought from Baltzer & Taaks, and sold to the Raleigh and Gaston Railroad Company through John D. Whitford, and paid for in part by Whitford's or Hawkins' check on Raleigh; Whitford, agent, bought this cargo of iron from me for $79.36 per ton, and paid in part for it only to the extent of Baltzer and Taaks' sale; the difference in price being still unsettled and due to me from Raleigh and Gaston railroad.

Q. 166. Please look at the letter dated Newbern, May 30th, 1869, addressed "Mr. Pickrell, my dear sir," and signed "John D. Whitford," and state if you received said letter, and know the handwriting thereof, and to what the same refers.

(Objected to.)

(Letter referred to marked Exhibit P., No. 23.)

A. Yes; it is written by Col. Whitford; it refers to the Williamstown & Tarboro railroad principally.

138 Q. 167. Now, please look at the letter shown you and made part of this question, and marked P., No. 24, "Chatham Railroad Company, president's office, Raleigh, N. C., February 8th, 1870, John F. Pickrell, Esq.; dear colonel," and signed "W. J. Hawkins," and state whether you received said letter, if you know the handwriting thereof, and by whom the same was written, and to what matters it refers.

(Objected to.)

A. Yes; it was written by Mr. Hawkins; it refers to some accounts or vouchers which I had signed; I presume they were not in accordance with the forms required in the office, and they seem to have been sent to me made up in that form, and I was desired to sign them and return them, which I know I did.

Q. 168. To what work, labor, performance, or disbursements did such vouchers refer which are described in the letter in the words: "You and Colonel W. in here last spring," and who was "Col. W.?"

A. The vouchers referred to work done on the Chatham railroad, I presume, and Colonel W. means Colonel Whitford, I presume, as he was my partner in building the road.

Q. 169. Now, please look at the letter headed, "Raleigh & Gaston Railroad Company, president's office, Raleigh, N. C., March 2d, 1870," addressed, "Mr. Pickrell, my dear sir," the first sentence of

which reads as follows: "I herewith send you by request of Dr. Hawkins, president, &c., four vouchers of amounts paid you on contract; it is necessary for you to sign these, which please do at once, and forward to Maj. W. Vass, treasurer Chatham Railroad Company, Raleigh, N. C.," and signed "John D. Whitford;" will you please look at the said letter and state whether you received the same, in whose handwriting it is, and to what vouchers it refers.

(Paper referred to marked "Exhibit P., No. 25.")

(Objected to.)

139 A. I received the letter; it is written by Col. Whitford; it is in his handwriting, undoubtedly; he asks me to sign some vouchers, which I no doubt did, and enclosed them to Major Vass; he also says the amount in different ways is in my hands; I cannot explain that.

Q. 170. Had or had not any such vouchers ever been paid you by the Chatham Railroad Company, or any one for the Chatham Railroad Company, and did you not ever receive the same?

(Objected to.)

A. I never had any vouchers paid.

Q. 171. Under and in reference to what contract was said vouchers alleged to have been paid and requested to be signed?

(Objected to.)

A. I don't know; I presume under my contract to build the Chatham road; I do not know any other answer to make to that.

Q. 172. Had or had not any money ever been paid you on vouchers such as therein described?

(Objected to.)

A. I have answered that I have never received any payments whatever on account of vouchers.

Q. 173. Now, please look at the letter dated "Raleigh, N. C., May 8th, 1871," addressed "Mr. Pickrell, my dear sir," and signed "John D. Whitford," and marked P. No. 26, as part of this question, and state whether you received this letter, in whose handwriting it is, and to what the same refers.

(The latter part of the question objected to, to wit, as to what the letter refers.)

A. I did receive it from Col. Whitford; it is in his handwriting; it refers to several matters not at all connected with this testimony; he makes some reference, however, to the Baltzer matter; I do not see that it refers to this case at all.

140 Q. 174. In the concluding portion of the first page of said letter occurs the following language: "As to Baltzer's matter, notwithstanding he loses no opportunity to abuse me, I have none, nor have I any trying to get Dr. Hawkins up to a fair settlement with him, and hope before long to be able to make him (Baltzer) a proposition he may accept, or at least not reject hastily; but

say nothing to Baltzer about it, for if I should fail in getting the authority he would condemn me for alluding to it, and put it down as deception in me;" please state whether or not said paragraph refers to the efforts you have mentioned which were made to settle the subject-matter of Baltzer & Taaks, as stated in the present suit, and, if not, to what other matter?

(Objected to generally and particularly, because the question is leading, and because the letter speaks for itself, and there is no ambiguity in the language thereof.)

A. The question does refer to a settlement of the dispute in this suit.

Q. 175. Now, please look at the letter dated "Raleigh, N. C., April 15th, 1871, Mr. John F. Pickrell, N. Y., dear sir," and signed "John D. Whitford," and state whether you received said letter, and in whose handwriting it is, and to what the same refers.

(Objected to.)

A. I did receive it; it is written by John D. Whitford; amongst other things it refers again to the matter in dispute in this suit and informs me that he is still endeavoring to get Dr. Hawkins to settle with Baltzer & Taaks.

(The paper referred to is marked P., No. 27.)

Q. 176. Referring again to the contract of March 6th, 1869, which is signed "W. J. Hawkins, pres't C. R. R. Co., and Jno. F. Pickrell & Co.," will you please state who were your partner or partners, associate or associates described by the word "Co.?"

(Objected to.)

141 A. John D. Whitford was half interested in the contract under our original agreement, and was the only partner I recognized, or positively knew of.

Q. 177. Was there or was there not at any time, and if so, when, a settlement and payment of any money between yourself and said John F. Pickrell & Co. or any one else; and, if yea, please state what amount of profits, if any, were paid, and what manner?

(Objected to.)

A. Before any division of profits was made, my agreement with Whitford was changed from an equal division between us of the profits to two-thirds to him and one-third to me; subsequent to that change, but when I cannot tell; forty-five thousand dollars were represented by Dr. Hawkins to have been the profits up to that time, and I received then the transaction occurring in my office in New York; I received as my portion one-third of the forty-five thousand dollars, $15,000; under my agreement with Whitford, Whitford was to receive two-thirds for himself and associates, but I don't know who his associates were; I do not know whether he had any, or a dozen; I only know I received one-third, $15,000; no accounts were submitted, and Dr. Hawkins stated that the profits up to that time was $45,000; I again received in notes and money $30,000, as being

the balance due on the contract; that thirty thousand dollars was paid in notes and money by John D. Whitford, who was acting for Dr. Hawkins, as he stated, the doctor being then in Baltimore; the payment was made without any accounts being submitted to me or furnished to me, and I was simply told by Whitford that that was all that could be done and all that would be done, but if I would accept it instead of making three parts, that he would take half and I half; I had bought fifty-one bonds of the Chatham railroad by understanding with Whitford and Hawkins, and sent them into Baltzer & Taaks' office, to be paid for; I took Whitford down to Baltzer's office, paid him for the bonds, which I handed to
142 Whitford, and have never received any account from him since, and they owe me for them now, and the balance, after paying for the bonds, was equally divided between Whitford and myself; that is all that I have received.

(Answer objected to by defendants' counsel.)

Q. 178. Please look at the paper purporting to be an account headed "The Chatham Railroad Co., in account with John F. Pickrell & Co.," dated "New York, June 23, 1869," and a copy of which is made part hereof marked Exhibit P., No. 28, and state whether or not you know said paper, and whether or not the same was rendered to you by the Chatham Railroad Company.

(Objected to.)

A. I think it was rendered by me to that company; I have signed it "John F. Pickrell & Co.;" I think it is my account to them or a copy of it; it cannot have been rendered to me by the company; this is a copy; the word "copy" looks to me as if it was written by Dr. Hawkins.

Q. 179. This account is itemed as follows: "March 6, received account contract, voucher No. 1, $93,730; ditto ditto No. 10, $62,000; total, $156,000;" was such profits ever paid you under and by virtue of any contract with said company?

(Objected to, generally and specially, because the tendency of the question is to discredit and disparage the parties' own witness.)

The plaintiffs' counsel states that the question is asked to bring out, as the examination will tend to do, the fact that no construction account ever was rendered by the Chatham Company to the witness; that no other account ever was rendered than this one now shown the witness, and that the profits of $93,730 and $62,000 are wholly assumed to have been paid.

A. It is not claimed to have been paid to me in this account, and therefore I say unhesitatingly I did not receive; I ask for the privilege of explaining this account.

Q. 180. You have the right to do it.

143 A. The account referred to show no receipts from profits; it simply shows receipts from the bonds, and disbursements for rails and other matters; and it includes sixty thousand dollars

which I have credited the company with as having received from General Littlefield, but I have not received it.

Q. 181. This account, also by vouchers or numbers 6, 7, 8, and 9, describes the receipt of—

1,630.6.2.26,
770.6.1.3,
330.16.0.15,
1,004.9.0 18 of iron rails;

will you please state whether or not the same describes the four deliveries of rails received through you from said Baltzer & Taaks?

A. Yes.

Q. 182. Besides the account now shown you, did said Chatham Railroad Company ever render you any other account, or was there any other account ever rendered between you and said company pertaining to the purchase of rails for said road?

A. This account was never rendered to me by the Chatham Railroad Company; they have never rendered me any account whatever; these are all memorandum accounts; that is all they are.

Q. 183. Did, or did not, said Chatham Railroad Company ever render you any account as contractor under said proposal of September 1, 1868, or March 6, 1869?

(Objected to.)

A. No.

Q. 184. Now please look at the paper shown you, marked Exhibit P. No. 29, headed "The Chatham Railroad Co., in account with John D. Whitford, agent," also dated "June 23, 1869," and signed "John D. Whitford, agent," and state what, if anything, you know about such paper.

(Objected to.)

A. Nothing whatever.

144 Q. 185. Now please look at the three papers shown you, being in pencil, marked, respectively, P. No. 30, P. No. 31, P. No. 32, and state what, if anything, you know about said papers?

A. I know nothing about them; I presume they are memorandums simply; but I do not know.

Q. 186. Look at the three papers, marked, respectively, Exhibits P. No. 30, and headed "J. F. Pickrell, in account with W. J. Hawkins, president and agent Chatham R. R. Co.," and Exhibit P. No. 31, marked "John D. Whitford, agent, in account with W. J. Hawkins, president Chatham R. R. Co.," and Exhibit P. No. 32, purporting to be a receipt for bonds, and state what, if anything, you know about such papers; and, if yea, state in whose handwriting, if you know, the same are?

(Objected to generally and specially, because this question has been answered by the witness in his answer to Q. 125.)

Counsel for complainants state that in putting the question last preceding he overlooked these distinctive marks that enter into the

character of the papers, and therefore repeated his question, with the description of the papers added, and does not mean to put it as a separate and distinct question.

A. I repeat my last answer.

Q. 187. Did you ever receive from William J. Hawkins, president, the bonds as described in Exhibit P. No. 32?

(Objected to generally, and because this question has been answered by the answer to the next two preceding questions.)

A. No; I don't know anything about them at all.

Q. 188. In the memorandum Exhibit P. No. 32, occurs the words, "Draft, M. S. Littlefield, for sale of 100 bonds, accepted by us;" state, if you know, who is "us," and whether or not you sold 100 bonds to pay such draft.

(Objected to generally and specially, because Exhibit P. No. 32, has not been put in evidence, not having been identified or proved by any witness whatsoever.)

145 A. I know nothing about this memorandum at all, and cannot answer it; I look upon it as a memorandum made by a clerk, upon which another account has been rendered; I have always stated that I did not receive the money for Littlefield's bonds for sixty thousand dollars.

Q. 189. Please look at the paper now shown you, which reads as follows—at the left hand corner in figures—

"$60,000. Dated WASHINGTON, *February* 23, 1869.

"Pay to the order of John F. Pickrell sixty thousand dollars, value received, and charge the same, as advised, to account.

"Your obedient servant,

"M. S. LITTLEFIELD."

—and addressed at the left hand lower corner to Charles Gould, Esq., 58 Wall street, New York, and state whether or not you know the handwriting of said paper; and, if yea, state what you know about the same.

A copy of the paper referred to is marked Exhibit P., No. 33.

(Objected to generally and specially, as *res inter alios acta*.)

Complainants' counsel states that it is offered to meet the issue and proof as to the character and dealings between the witness and the company defendant, and the said Whitford and Hawkins, and as bearing upon issues made by the pleadings.

A. It is signed by M. S. Littlefield, for I saw him sign it; I got it from him in Washington, in lieu of a similar draft on Hoyt & Gardner, the payment of which had been refused; I did this at the instance of Dr. Hawkins. General Littlefield met me in Washington upon telegraph from Hawkins—met me at the depot there; I told him I wanted that Hoyt & Gardner draft settled; he was of course unable to pay it, but gave me this draft; I telegraphed it back to Dr. Haw-

kins that he had settled it with me, because he did settle it by giving me a new draft; I took the settlement.

Q. 190. Is or is not the $60,000 described in the said draft the same item of $60,000 referred to in the account P., No. 28?

146 (Objected to, for the same reasons as to Q. 189.)

A. Yes.

Q. 191. Now, please look at the paper shown you, marked P., No. 34, headed "Chatham railroad, in account with John F. Pickrell," and dated June 30, 1871, and state what, if anything, you know about said paper.

A. It is an abstract from my books, made by Mr. Galpin, my bookkeeper, showing all the transactions I had with the Chatham railroad that ever went on my books; that is also simply a memoradum account for me to look over.

Q. 192. Besides the accounts on memorandum P., No. 28 and P., No. 34, just shown you, was there or was there not ever at any time any other account, within your recollection, rendered or kept between yourself and said company?

A. P., No. 34, never was rendered; none that I know of.

Q. 193. Did or did not the said Chatham Railroad Company, within your knowledge or recollection, ever render to you any account as contractor with it for building its railroad?

(Objected to.)

A. They have never rendered me any account.

Cross-examination by Mr. FULLER:

Cross-Q. 194. When did you leave your home in North Carolina to come to New York for the purposes of this examination?

A. On Monday morning, the 24th of March, 1879.

Mr. Fuller states that he is unable to go on with the further cross-examination, for the reasons stated.

Adjourned to a date to be agreed upon between counsel, of which notice will be given to the examiner.

147 COMPLAINANTS' P., No. 1.—R. E. S., *Ex'r.*

NEW BERN, *May 13th*, 1868.

JOHN F. PICKRELL, Esq.

MY DEAR SIR: I have, on my arrival in New York, a matter to lay before you in which I think there is much money. It is a railroad contract and stock in railroads which would give us the control of these State bonds to a million or two, &c., &c. If you can aid us in the start with money, as you proposed to do in the Wilmington, C. and R. road, we can make for you something worth having. There will be not a particle of risk, as we will have all in our own hands. What I wish you to do is to see some of your moneyed friends as early as convenient, that they may join us if you deem our scheme entirely feasible, which I am satisfied you will when I have an opportunity to explain it to you. Parties here of the highest standing

will be interested with us, and may call on you with me when I reach your city, which I expect to do next week.

Keep all this to yourself, except to manage it as before suggested with your Northern friends. If any of our Southern people, and particularly Mr. Moorhead, from N. C., should call upon you about our bonds, give him no satisfaction about getting them released. In the meantime try to make the arrangement to do so, if practicable, before I see you.

I have not written Bryce on the subject, but it does seem to me $100,000 of our bonds ought to satisfy his bank as to security, with the company's note to back them, and they having precedence over every other claim now and hereafter.

Cowen sold his bonds, or a portion of them, at $75. I mean his company bonds endorsed by the State. He is holding the balance at $85. Enclosed, just as a matter of curiosity, I send you the certificate in regard to fraud in our elections. I am acquainted with all the parties. This thing was done everywhere in the State, as none but radicals, white and black, were allowed to hold the polls.

Will the Northern people forever stand by with indifference
148 to their own safety and freedom, if they have no charity for us or regard for principles, morals, and religion, permit this thing to go on, which must soon bring disgrace and ruin upon the whole country.

Very truly, JOHN D. WHITFORD.

149 COMPLAINANTS' P., No. 2.—R. E. S., *Ex'r.*

RALEIGH, *August 21st*, 1868.

Mr. JOHN F. PICKRELL, *New York.*

MY DEAR SIR: I have concluded to visit you next week with one of the parties authorized to close contract, &c. Everything has worked smoothly up to this time. Passing events or coming events require us to act hastily, hence my contemplated visit to you in a few days. Our bills have all passed the Legislature, and the Legislature adjourns on Monday next. We shall have a large number of bonds to sell, and about ten thousand tons of iron to buy at once, but you had better not speak of these matters until our arrival.

Yours, truly, JOHN D. WHITFORD.

(Endorsed:) J. D. Whitford, Aug. 21, '68.

150 COMPLAINANTS' P., No. 3.—R. E. S., *Ex'r.*

NEW YORK, *Sept. 1st*, 1868.

To the President of Chatham R. R. Co., WILLIAM J. HAWKINS, Esq.

SIR: On behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Charles Gould, Esq., I propose as follows:

1st. To contract to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all the materials for same, at your engineer's estimates, provided they are not less than is allowed for similar work on the Western North Carolina road.

2d. The above is based upon my having the contract to supply

your road with all iron required; also all locomotives, spikes, chairs, and equipments generally, at prices to be agreed on between us, so soon as the condition of your company will permit of the making of such contracts.

3d. In accordance with our various conversations whilst you were here, I further agree and propose to accept your State bonds, at prices to be fixed by us, for all supplies contained in Prop. 2, and further to loan and supply you with all the money you shall require from time to time for the purpose of your operations in building and supplying your road.

(S'g'd) JOHN F. PICKRELL,
For Self and Associates.

Signed in duplicate.

Accepted, subject to the approval of the board of directors.
(S'g'd) W. J. HAWKINS,
Pres't Chatham R. R. Co.

151 COMPLAINANT'S P., No. 4.—R. E. S., *Ex'r.*

No. 466. NEW YORK, *Sept.* 1*st*, 1868.

Metropolitan National Bank, pay to the order of Dr. W. J. Hawkins, pres't, ninety-seven thousand two hundred and sixty-six $\frac{67}{100}$ dollars.

$97,266.67. JOHN F. PICKRELL.

[Written on left margin:] John F. Pickrell, 64 Broadway.

152 EXHIBIT P., No. 5.—R. E. S., *U. S. Com'r.*

This agreement, made this —— day of ———, 1868, by and between Messieurs Schepeler and Company and Messieurs Baltzer and Taaks, of the city of New York, parties of the first part, and John F. Pickrell, also of the city of New York, party of the second part, witnesseth:

I. The parties of the first part agree to sell and deliver to the party of the second part, and the party of the second part agrees to purchase and take of the parties of the first part ten thousand tons of English or Welsh iron rails of well-known good brands (2,240 pounds to the ton, English or American weight), of the pattern known as Erie T, to be slotted or notched for the ordinary American lip chair, and to be of the usual weight and lengths of what are known in the market as from fifty to fifty-two pounds per yard, at the price of seventy-nine and thirty-six cents, legal tender United States currency, this price being based upon the present United States duty of $15\frac{68}{100}$ gold; if such duty shall be increased the party of the second part is to be charged with such increase, if actually paid by the parties of the first part; if diminished, he is to be credited with the amount of the diminution; if the benefit of such diminution, actually obtained by the parties of the first part, such charge or allowance is to be made in currency, at the rate of 146 for gold.

II. The iron is to be laden on board ship at the place of ship-

ment for transportation to the port of New York, or at seller's option, delivered at said port of New York, within ten months from the date of this agreement, one thousand tons of said iron are to be laden on shipboard at the place of shipment for transportation to New York, or, at seller's option, delivered in New York within six weeks from the date of this contract.

The remainder of said iron is to be laden on board ship at the place of shipment for transportation to New York, or, at sell-
153 er's option, delivered in New York, at the rate of about three thousand tons in each three months. Whenever any such iron is delivered in New York, the same, at seller's option, may be delivered from warehouse or from on board ship in the port of New York. If delivered from warehouse, to be delivered at the water's edge.

III. The iron is to be paid for as follows: The parties of the second part are to deposit with the United States Trust Company, on or before the execution of the agreement, such an amount of the bonds of the State of North Carolina as will at the market price on the day of deposit be equal to the whole purchase-money for the said ten thousand tons of iron and fifteen per cent. in addition thereto, which margin of fifteen per cent. is to be kept good until the full performance of this contract. The said bonds are to be held by said trust company subject to the joint order of the parties of the first and second part, or the survivors of said parties, respectively. On the presentation of a warehouse receipt or ship's delivery order for any lot of said iron the parties of the second part are to join with the parties of the first part in drawing an order on said United States Trust Company in favor of the parties of the first part for so many of the said bonds as will at the market price thereof on the day of drawing equal the sum payable for such lot of iron at the price of seventy-nine dollars and thirty-six cents per ton as aforesaid, or pay that amount in money. Upon the presentation of a bill of lading for any lot of such iron placed on shipboard for transportation to the port of New York the parties of the second part shall join with the parties of the first part for so many of said bonds as will at the market price thereof on the day of drawing equal the sum due for the iron mentioned in the bill of lading at $49.46 per ton; the balance payable for such iron, namely, $29.90 per ton, shall be paid in like manner on the arrival of the vessel containing the same in the port of New York. Notice shall be given to the parties of the second part of the arrival of any ship containing iron, and they are to be ready to receive the same whenever the ship is ready to discharge.

154 If at any time the parties of the second part, or the survivor of them, shall refuse to join in drawing an order for the amount due for iron as aforesaid, the party of the first part may retain the warehouse receipt or bill of lading, or ship's delivery order, and may sell the iron for which payment has been refused at any time after five days' notice of intention to sell, either at public or private sale, for and on account of the parties of the second part, who shall be liable to reimburse the parties of the first part; any

loss on such resale such notice of intention to sell to be given by depositing the same in the general post office, in city of New York, addressed to the parties of the second part at said city.

IV. If any cargo of the said iron shall be lost at sea or while in port, or, for any cause whatsoever beyond the control of the parties of the first part, shall fail to arrive, the parties of the first part shall not be held in any manner reliable or be bound to replace the same.

V. The warehouse receipts or ship's delivery order and bills of lading hereinbefore mentioned are to be presented to the parties of the second part at their present office in the city of New York, unless they shall hereafter designate some other place in the city of New York for that purpose.

VI. In the event of a breach of this agreement by either of the parties to the same the measure of damages recoverable by the parties of the first part shall be the profits which they can with reasonable certainty show that they otherwise would have made, and, in addition thereto, any loss sustained on any resale of iron. And the measure of damages recoverable by the parties of the second part shall be the difference between the cost of replacing the iron which the parties of the first part may fail to deliver and the price at which they were to deliver.

VII. It is understood that the said bonds are deposited as a fund out of which to pay for said iron, and that the parties of the
155 first part are to have a lien on the same for the faithful performance of this contract on the part of the parties of the second part, but it is also understood that the parties of the first part do not look solely to the said bonds for payment. And if for any reason they should at any time fail to constitute a sufficient fund for payment the parties of the first part are, nevertheless, to be paid for iron at the same rates and times as hereinbefore provided.

VIII. In case of the loss of any iron in transitu, the parties of the first part agree to refund to the parties of the second part the amount paid on the same as soon as as the insurance thereon shall be legally due from the underwriters who shall have insured the same.

IX. The parties of the second part reserve the right to sell any or all of the bonds deposited with said trust company, and in case of sale the money realized for the same shall be placed with said trust company on the same terms, and represent the said bonds for all the purposes of this contract. The said trust company shall deliver the bonds sold on the presentation and delivery of such joint order as aforesaid. The parties of the first part shall have their election to draw in payment for iron, bonds or money, the proceeds of bond, if any shall have been substituted in the place of bonds sold.

X. The parties of the first part instead of placing said iron on board at the place of shipment for transportation to the port of New York, may at their election place the same or any part thereof on board for transportation to the port of Norfolk, Va., in which latter case the parties of the first part shall be allowed —— per ton, U. S. legal tender currency, over and above the price for iron hereinbefore mentioned, such addition to be paid at the time of the first instalment, that is, on delivery of the bill of lading as aforesaid.

XI. It is expressly understood that the parties of the first part do not undertake to deliver all the iron within ten months of the date hereof, but do undertake to have all the iron not delivered from warehouse as aforesaid placed on board ship at the place of shipment ready for transportation to the port of New York within the time aforesaid.

156 EXHIBIT P. No. 6.—R., E. S., *Ex'r.*

This agreement, made this eleventh day of September, one thousand eight hundred and sixty-eight, by and between Messieurs Schepeler & Company and Messieurs Baltzer & Taaks, of the city of New York, parties of the first part, and John F. Pickrell, also of the city of New York, party of the second part, witnesseth:

I.

The parties of the first part agree to sell and deliver to the party of the second part, and the party of the second part agrees to purchase and take of the parties of the first part, two thousand tons of English or Welsh iron rails of well known good brands (twenty-two hundred and forty pounds to the ton, English or American weight), of the pattern known as Erie T, to be slotted or notched for the ordinary American lip chair, and to be of the usual weights and lengths of what are known in the market as from fifty to fifty-two pounds per yard, at the price of seventy-nine dollars and thirty-six cents, legal tender United States currency, this price being based upon the present United States duty of fifteen dollars sixty-eight cents, gold; if such duty shall be increased the party of the second part is to be charged with such increase, if actually paid by the parties of the first part; if diminished, he is to be credited with the amount of the diminution; if the benefit of such diminution be actually obtained by the parties of the first part, such charge or allowance is to be made in currency at the rate of one hundred and forty-six for gold.

II.

The iron is to be laden on board ship at the place of shipment for transportation to the port of New York, or, at seller's option, to be delivered at said port of New York within ten months from the date of this agreement. One thousand tons of said iron are to be laden on ship board at the place of shipment for transportation to New York, or, at seller's option, delivered in New York within six weeks from the date of this contract. The remainder of said
157 iron is to be laden on board ship at the place of shipment for transportation to New York, or, at seller's option, delivered in New York at the rate of about three thousand tons in each three months.

Whenever any of such iron is delivered in New York the same, at seller's option, may be delivered from warehouse or from on board ship in the port of New York; if delivered from warehouse to be delivered at the water's edge.

It is expressly understood that the parties of the first part do not undertake to deliver all the iron within ten months from the date hereof, but do undertake to have all the iron not delivered from warehouse as aforesaid placed on board ship at the place of shipment, ready for transportation to the port of New York within the time aforesaid.

III.

The iron is to be paid for as follows: The party of the second part is to deposit with the Continental National Bank, on or before the execution of this agreement, such an amount of the bonds of the State of North Carolina as will at the market price on the day of deposit be equal to the whole purchase-money for the said ten thousand tons of iron, and fifteen per cent. in addition thereto, which margin of fifteen is to be kept good until the full performance of this contract. The said bonds are to be held by said bank, subject to the joint order of the parties of the first and second part and William J. Hawkins, or his attorney, or the survivors of said parties respectively. On the presentation of a warehouse receipt or ship's delivery order for any lot of said iron, the party of the second part and said William J. Hawkins, or the survivor of them, are to join with the parties of the first part in drawing an order on said bank, in favor of the parties of the first part, for so many of the said bonds as will at the market price thereof on the day of drawing equal the sum payable for such lot of iron at the price of seventy-nine dollars and thirty-six cents per ton as aforesaid, or pay that amount in money. Upon the presentation of a bill of lading for any lot of such iron placed
158 on shipboard for transportation to the port of New York or Norfolk, Virginia, the party of the second part and the said Hawkins, or the survivor of them, shall join with the parties of the first part in drawing an order on the said bank in favor of the said parties of the first part for so many of said bonds as will at the market price thereof, on the day of drawing, equal the sum due for the iron mentioned in the bill of lading at forty-nine dollars and forty-six cents per ton; the balance payable for such iron, namely, twenty-nine dollars and ninety cents per ton, shall be paid in like manner on the arrival of the vessel containing the same at the port of New York or the port of Norfolk. Notice shall be given to the party of the second part, or his personal representatives, of the arrival of any ship containing iron, and he or they are to be ready to receive the same whenever the ship is ready to discharge.

In the event of the death of the said party of the second part, and no appointment of a personal representative at the time, notice is required to be given; such notice may be given to the said William J. Hawkins by letter addressed to him at the city of New York. If at any time the party of the second part, or his personal representative, or the said William J. Hawkins, or his attorney, or the survivor of them, shall refuse to join in drawing an order for the amount due for iron as aforesaid the parties of the first part may retain the warehouse receipt or bill of lading or ship's delivery order, and may sell the iron for which payment has been refused at any time

after five days' notice of intention to sell, either public or private sale, for and on account of the party of the second part, or his personal representative, who shall be liable to reimburse the parties of the first part any loss on such resale, such notice of intention to sell to be given by depositing the same in the general post office in the city of New York, addressed to the party of the second part, or his personal representative, or the said William J. Hawkins, in the event of the death of the said party of the second part, and the non-appointment of any personal representative at the said city of New York.

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IV.

If any cargo of the said iron shall be lost at sea, or while in port, or for any cause whatsoever beyond the control of the parties of the first part, shall fail to arrive, the parties of the first part shall not be held in any manner liable, or be bound to replace the same. In case of the loss of any iron in transitu the parties of the first part agree to refund to the party of the second part the amount paid on the same, as soon as the insurance thereon shall be legally due from the underwriters who shall have insured the same.

V.

The warehouse receipts or ship's delivery order and bills of lading hereinbefore mentioned are to be presented to the party of the second part, or his personal representatives, or the said William J. Hawkins at the present office of the said party of the second part, in the city of New York, unless he shall hereafter designate some other place in the city of New York for that purpose.

VI.

It is understood that the said bonds are deposited as a fund out of which to pay for the said iron, and that the parties of the first part are to have a lien on the same, for the faithful performance of this contract, on the part of the party of the second part; but it is also understood that the parties of the first part do not look solely to the said bonds for payment, and if for any reason they should at any time fail to constitute a sufficient fund for payment the parties of the first part are nevertheless to be paid for iron at the same rates and times as hereinbefore provided.

VII.

The party of the second part reserves the right to sell any or all of the bonds deposited with said bank, and, in case of sale, the money realized for the same, or a sufficient amount to cover the price of all said iron, and fifteen per cent. in addition thereto, shall be placed
160 with said bank on the same terms, and represent the said bonds for all the purposes of this contract.

The said bank shall deliver the bonds sold on the presentation and delivery of such joint order, as aforesaid. The parties of the first part shall have their election to draw, in payment for iron,

bonds, or money, the proceeds of bonds, if any shall have been substituted in the place of bonds sold.

VIII.

On receiving timely notice from the party of the second part the parties of the first part agree, if it shall occasion no delay, or not interfere with any pending arrangement or negotiation, to endeavor to place such portion of the iron as they may be requested on board ship for transportation to the port of Norfolk, Virginia; and for all iron shipped to Norfolk instead of New York the party of the second part agrees to pay, in addition to the price before mentioned, the difference between the cost of freight to Norfolk and what would have been the cost of freight if shipped to New York.

IX.

In the event of a breach of this agreement, by either of the parties to the same, the measure of damages recoverable by the parties of the first part shall be the profits which they can, with reasonable certainty, show that they would otherwise have made, and, in addition thereto, any loss sustained on any resale of iron. And the measure of damages recoverable by the party of the second part shall be the difference between the cost of replacing the iron which the parties of the first part may fail to deliver and the price at which they were to deliver.

In testimony whereof, the said parties to these presents have hereunto subscribed their names, the day and year first hereinbefore written.

In the presence of—

(Signed) GEORGE H. STARR.

(Signed) SCHEPELER & CO.,
By JOHN F. SCHEPELER.

(Signed) BALTZER & TAAKS,
By H. R. BALTZER.

(Signed) JOHN F. PICKRELL.

161 STATE OF NEW YORK, } ss.:
City and County of New York, }

Be it known that on this the twenty-fourth day of September, in the year one thousand eight hundred and sixty-eight, before me personally appeared John F. Schepeler, Herman R. Baltzer, and John F. Pickrell, known to me, and known to be the individuals described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same; and the said John F. Schepeler further acknowledged that he executed the same in the name of and as the act and deed of the firm of Schepeler & Company, of which he is a member; and the said Herman R. Baltzer acknowledged that he executed the same in the name of and as the act and deed of the firm of Baltzer & Taaks, of which he is a member.

In witness thereof, I have set my hand and affixed my official seal, the day and year last above written.

[SEAL.] (Signed) GEORGE H. STARR,
Notary Public, New York County.

162 EXHIBIT P., No. 7.—R. E. S., *Ex'r.*

(Copy.)

Whereas Messrs. Schepeler & Company, Messrs. Baltzer, Taaks, and John F. Pickrell have entered into an agreement of date herewith, by which the said Schepeler & Co. and Baltzer & Taaks agree to sell and deliver on certain terms therein mentioned ten thousand tons of iron rails to the said John F. Pickrell, a copy of which said agreement is annexed hereto, and which said agreement provides for the payment for said iron by said Pickrell by the appropriation of certain bonds of the State of North Carolina in the manner set forth in said agreement.

Now, therefore, in consideration of the promises set forth in the said agreement and the undertakings of the parties of the first part therein mentioned, as therein expressed, and as hereinafter expressed, I, William J. Hawkins, hereby agree that fourteen hundred bonds of the State of North Carolina, each for $1,000, numbered from 1600 to 3000 inclusive, which are now on deposit in the Continental Bank of the city of New York, subject to my order as president of the Chatham Railroad Company of North Carolina, shall remain on deposit in said bank, subject to the joint order of the parties mentioned in said contract as being, provided, while said contract is being performed, for the purpose of providing for the payment for said iron, and as security for the performance of said contract as therein provided; and I agree to unite in drawing the orders therein provided for at the times and in the manner therein set forth; provided, however, that it is hereby distinctly understood and agreed that when any delivery of said bonds is to be made, and any order for such delivery is required pursuant to said contract, I am to have the option and right to pay in money the sum payable under said contract for the iron, in respect to which such delivery of bonds is required, at the contract price; that is to say, at the rate of forty-nine dollars and forty-six cents per ton on the presentation of the bills of lading, and twenty-nine dol-
163 lars and ninety cents per ton on the delivery of the iron; and upon such money payments being made by me, I shall have the right to withdraw the bonds from deposit which otherwise would have been deliverable under said contract, and such bonds shall be delivered to me by said Continental National Bank on the presentation of said joint order as aforesaid, such option and right to be exercised by me within five days after being notified in the manner provided in the contract of the right of said parties of the first part therein named to a delivery of bonds pursuant thereto.

It is also hereby expressly provided that in case of loss of iron or any part thereof on shipboard between the port of shipment and the port of entry or delivery all payments made on account thereof

are to be refunded by said Schepeler & Company and Baltzer & Taaks as soon as such loss is ascertained.

(Signed.) W. J. HAWKINS,
President Chatham Railroad Co.

New York, Sept. 11th, 1868.

Witness—
(Signed.) JOHN D. WHITFORD.

164 EXHIBIT P., No. 8.—R. E. S., *Ex'r.*

OCTOBER 12*th*, 1868.

John F. Pickrell to Schepeler & Co. & Baltzer & Taaks.

To 1st delivery on contr. for 10—m. tons (Sept. 11) on board of ship L. H. Armstrong, Portsmouth, Va., 3,547 bars R. R. iron, Erie T pattern, w'h'g T. 630,6.2.26, *@* c'cy $79.36 per ton	$50,023 51

NOVEMBER 2*d*, 1868.

John F. Pickrell to Schepeler & Co. & B. & T.

To 2d delivery on contract for To. 10—m. (Sept. 10) ex City of Montreal, 4,341 bars R. R. iron, w'g To. 770.6.1.3, at c'cy $79.36	$61,132 11
To 3d delivery on same contract, 1,859 bars of railroad iron in stores of Woodruff & Robinson, w'h'g To., 330.16.0.15, c'cy $79.36	26,252 82
To 4th delivery on same contract, 5,642 bars R. R. iron in stores of W. & R., w'h'g To. 1,004.9.0.18, at c'cy $79.36	79,713 79
c'cy	$167,098 73

STATE OF NEW YORK, *ss:*

I, Alfred Reichelt, a public notary in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, do certify the foregoing to be a true and exact copy from the books of Messrs. Baltzer & Taaks, New York, the same having been carefully compared by me.

165 In testimony whereof, I hereunto set my hand and notarial seal, this twenty-fourth day of May, one thousand eight hundred seventy-seven.

[L. S.] ALFRED REICHELT,
Notary Public, 71.

(Endorsed:) "Baltzer & Taak's account. N. B.—Prove the delivery of iron and the amount due."

166 EXHIBIT P., No. 9.—R. E. S., *Ex'm'r.*

(Triplicate.)

NEW YORK, *November 2d*, 1868.

Mr. John F. Pickrell bought of Schepeler & Co. and Baltzer & Taaks.

Second delivery on contract, dated September 11th, 1868, for 10,000 tons R. R. iron, ex City of Montreal (Wetmore Yard), Ebber Gate, 4,341 bars railroad iron, w'h'g To. 770.6.1.3, @ c'cy $79.36 per ton, cash ..... c'cy .. $61,132 12

Specifications of length.

4,129 bars of	24′	To.	637. 1.2.27	
17 " "	23′	"	2.17.3. 3	
113 " "	22′	"	18.12.–.27	
15 " "	21′	"	2.17.–. 9	
35 " "	20′	"	5. 4.3.—	
3 " "	19′	"	—. 8.1.13	
16 " "	18′	"	2. 2.3.25	
13 " "	16′	"	1.11.1.11	
4,341 bars		To.	770. 6.1. 3	

Contract quantity ..... To. 10,000.—.—.—

Above 1st delivery			To. 630.6.2.26
" 2d "	To.	1,400.13.0. 1	" 770.6.1. 3
Remain	To.	8,599. 6.3.27	To be delivered.

Accepted, and iron rec'd

JOHN F. PICKRELL.

167 EXHIBIT P., No. 10.—R. E. S., *Ex'r.*

NEW YORK, *November 2d*, 1868.

Mr. John F. Pickrell, bought of Schepeler & Co., and of Baltzer & Taaks.

Third delivery on contract, dated September 11th, 1868, for 10,000 tons railroad iron, in stores of Woodruff & Robinson, yard H, Congress street (Brooklyn), 1,859 bars of railroad iron, wh'g To. 330.16. 0.15, @ c'cy. $79.36 per ton, cash ..... C'cy .. $26,252 82

Specifications of Lengths.

1,602 bars of	24′	To.	289. 8. 2.18
197 " "	22′	"	32.12. 0. 4
44 " "	20′	"	6.12. 0.17
16 " "	18′	"	2. 3. 1. 4
1,859 bars		To.	330.16. 0.15

Contract quantity ..... To. 10,000.—.—.—

Above 1st delivery		To.	630. 6. 2.26
" 2d "		"	770. 6. 1. 3
" 3d "	1,731. 9.0.16	"	330. 1.60.15
Remain	To. 8,268.10.3.12 to be delivered.		

168 EXHIBIT P., No. 11.—R. E. S., *Ex'm'r.*

(Triplicate.)

NEW YORK, *November 2d*, 1868.

Mr. John F. Pickrell, bought of Schepeler & Co., and of Baltzer & Taaks.

Fourth delivery on account, dated September 11th, 1868, for 10,000 tons railroad iron, in stores of Woodruff & Robinson, yard H, Congress street (Brooklyn), 5,642 bars railroad iron, wh'g To. 1,004.9.0.18, @ c'cy $79.36 per ton, cash C'cy $79,713 79

Contract quantity To. 10,000.—.—.—

1st delivery		To.	630. 6.2.26
2d "		"	770. 6.1. 3
3d "		"	330.16.0.15
4th "	2,735.18.1. 6	"	1,004. 9.0.18
Remain	To. 7,264. 1.2.22 to be delivered.		

Specifications of lengths.

5,438 bars of 24'.
183 " " 24'.
21 " " 18'.

5,642 bars To. 1,004. 9.0.18

Accepted and iron received.

JOHN F. PICKRELL.

169 EXHIBIT P., No. 12.—R. E. S., *Ex'r.*

The Western Union Telegraph Company.

27.

Dated Raleigh, N. C., Dec. 17, 1868.

Received at 134 Pearl.

To Col. Jno. D. Whitford or Jno. F. Pickrell, 60 Wall:

Our bill passed to-day. Both houses all right. Now and exactly as copy sent you yesterday. Now our bonds will go. The January interest will be paid.

W. J. HAWKINS.

January. 27DTT.
F. K. 1727.

(Endorsed:) W. J. Hawkins. Dec. 17, '68.

170 EXHIBIT P., No. 13.—R. E. S., *Ex'r.*

Western Union Telegraph Company.
18.
Dated Raleigh, N. C., M'ch 18, 1869.

Received at 134 Pearl.

To John F. Pickrell, *00* Wall:

B. returned this morning. Tell Baltzer keep quiet for a day or two. Matters progressing favorably.

JOHN D. WHITFORD.
15. 2.35.

(Endorsed:) "Jno. D. Whitford. M'ch 18, '69. Ans. M'ch 18, '69."

171 EXHIBIT P., No. 14.—R. E. S., *Ex'r.*

RALEIGH, *Jan'y 8th*, 1869.

MR. PICKRELL.

MY DEAR SIR: Your letters reach me in good season, and I am always glad to hear from you, and would write you oftener in return, but for the fact of Dr. Hawkins constantly communicating with you, by telegraph of course. His bond matter, which is now being argued in the supreme court, will be in doubt until the decision of the court is known. Both sides seem now sanguine, and, strictly between ourselves, I think there is some doubt, while Hawkins believes the decision will be in his favor. However, Mr. Hayward, distinguished lawyer of the W. & W. R. R. Co., told me yesterday while he thought the court at present would be against the legality of the bonds, yet the issue could and would be made by the Legislature to stand before it adjourned. This statement to me, from that quarter, I consider encouraging, as Hayward did not know whether I was with him or not in sympathy. If the brokers' board had delayed their action in the first instance there would have been no trouble, as it would have beaten off opposition to the bonds here. I am clearly of the opinion, when the matter is settled, there will be another State agent, and the Chatham R. R. Co. will be consulted about the appointment. Some days must elapse before the case in court is closed. In the meantime we will keep you advised of passing events. * * * Gen. Stubbs is expected here to-day, but it will not do to commence his work until the bond question is settled.

Maj. Cameron will probably be up here Monday, or I will go down to see him early next week.

Spriggs' pony should leave Newbern to-day, on the St. Terry, and reach N. Y. Tuesday. The horse is wild; don't know how to eat corn, oats, &c., but will make a handsome little fellow next summer, and I believe a quick pacer. Don't have him cut; he will not trouble you as a stud. Give him at first cracked corn, con-
172 siderable salt, fodder, &c. Some careful boy or man should break him. He has been ridden some. Be careful of too

heavy weights upon him. W. C. W. promised to attend to shipping him. I kept him over a week, fearing he was too thin for the sea voyage. He is in the rough, wild state, feet and all. Let his mane grow out—some foolish fellow cut the ends off. Speaking of horses, Col. George Little has a pr. of blooded horses, bays, one a mare and the other a gelding, both colts between four and five; they are not broken, but have been worked a little. The horse would make a four-mile racer if put to it. I think they would make you a fine pr. for your carriage. They are out of blooded mares by the celebrated race horses "Tar River" and "Red Eye." Let me know if you wish to buy and what you would be willing to give. Of course as to size you cannot as yet tell what they will be. All the blooded horses, however, are light and nervy, you know; these are colts.

I am at Gov. Manley's and he says "remember me to Mr. Pickrell." The ladies are at hand, and say they regret you are neither single yourself nor have a son big enough for a sweetheart, and have such a mean clerk. I told them I was writing it, and they say I have got better sense, but you see it is not so. Well, I am a little struck "loony" on the subject of women; hope soon to get over it.

I sincerely reciprocate the compliments of the season, and wish you a prosperous new year.

Remember me to Mr. Gould and to Messrs. Greenleaf, Norris & Co., Schepeler & Co., and to Baltzer & Taaks. Tell Baltzer to be of good cheer. "All's well that ends well," and I think we will in the end triumph over open and secret foes. If Mr. Hardy is with you, tip your hat for me. Mr. Pickrell, I regret to trouble you with such bad writing, and hope some of these days to improve "my hand write."

I have to write upon, to-day, a rickety table.

Yours, truly, JOHN D. WHITFORD.

Mr. Pickrell, you had better pay the Tradegar bill. If you desire it, I will send you an order on Greenleaf, Norris & Co.,
173 for the amount, or you can pay it and I will give it on my return, just as you like. Hawkins would have sent the money, but deemed it best to keep the matter in your hands, as I did not wish any bills for the articles in the hands of the treasurer, except from you, as contractor, with your profit added.

(Endorsed:) "John D. Whitford. Jan'y 8, '69. Ans., 13."

174 EXHIBIT P., No. 17.—R. E. S. *Ex'm'r.*

(Copy.)

NORTH CAROLINA, *Wake County*:

Agreement between the Chatham Railroad Company and John F. Pickrell & Co., of New York, made in pursuance of a preliminary contract dated September 1st, 1868, this March, 6th, 1869.

The said Pickrell & Co. agree to furnish the first section of thirty miles of the Chatham railroad, beginning at Raleigh, including grading, masonry, culverts, and superstructures, but not including

bridge over Haw river, under the directions and supervision of the president of the company. The rails on said section to be best English iron of the T pattern, fifty pounds to the lineal yard. They agree likewise to furnish like iron for the second section, the total quantity for both sections to be thirty-six hundred and fifteen tons (3,615). The chairs on said first section to be of the Phenix pattern. Said Pickrell & Co. agree further to complete at Cary the station house and also a well, side track, water tank, switch and scales, and to build at two other points, to be designated by said president, like station houses, wells, tanks, side tracks, switches, and scales. The side track at all stations to be estimated as part of the thirty miles constituting the section.

It is agreed that the culverts on the said road are to be of stone or iron, except in case of low embankments, in vitrified clay may be used. All this above work and material are to be subject to the inspection of the president of the Chatham Railroad Co.

The said Pickrell & Co. agree likewise to furnish two first-class locomotive engines delivered at Weldon, North Carolina; also ten flat cars, ten gravel or dirt cars, one shanty car, one conductor's car, six pole or band cars. The above list including those already furnished and received. Said rolling-stock to be subject to the inspection of the master machinist of the Raleigh & Gaston Railroad Co.

175 The work above mentioned, and rolling-stock, iron, and cars to be furnished and delivered on or before the first day of August, 1869.

In consideration of the faithful performance of this contract the Chatham Railroad Company agrees to pay from time to time, as the work progresses, six hundred and eleven thousand dollars ($611,000), said Pickrell & Co. accepting bonds of the State at sixty per cent., as per statement rendered.

The said Chatham Railroad Company is to pay for above-mentioned iron seventy-nine $\frac{36}{100}$ dollars per ton, and likewise the freight on the iron, material, and supplies from New York to destinations on the line of the road. The iron to be paid for on delivery at Portsmouth, this payment to be credited on the $611,000 above mentioned.

This contract includes work already done and material, stock, &c., furnished heretofore, for which receipts have been given and payments made by the parties.

In testimony whereof, the said parties hereto affix their signatures.

W. J. HAWKINS,
Prest. C. R. R. Co.
JNO. F. PICKRELL & CO.

Witness:
(Signed) KEMP P. BATTLE.
(Signed) JNO. D. WHITFORD

176 EXHIBIT P., No. 17.—R. E. S., *Ex'r.*

2502. 634.

The Western Union Telegraph Company.

No. 69. Received at 145 Broadway, Ap'l 19, 1870.

Dated Balto., Md., Ap'l 19

To John F. Pickrell, 42 Broadway, N. Y.:

We cannot get over before to-morrow evening.

JOHN D. WHITFORD.

7—D. H.—Frank—2681.

177 EXHIBIT P., No. 18.—R. E. S., *Ex'm'r.*

The Western Union Telegraph Company.

No. 248. 2592. 11.26.

Rec'd at 145 Broadway, June 24th, 1870.

Dated, Raleigh, N. C., June 24.

To John F. Pickrell, 42 Broadway:

Clews' bonds necessary to get mortgage bonds here; value them nominally; Sloan will see you Monday.

JOHN D. WHITFORD.

16—Paid.

WM. G.

178 EXHIBIT P., No. 19.—R. E. S., *Ex'r.*

20. The Western Union Telegraph Company.

Dated, Newbern, N. C., July 7th, 1870.

Received at 3.35.

To John F. Pickrell, 42 Broadway:

Will remain as desired; H. also thought I better remain.

JOHN D. WHITFORD.

10—Collect—1.30. 1.30.

(Endorsed:) "J. D. Whitford. July 7th, '70."

179 EXHIBIT P., No. 20.—R. E. S., *Ex'r.*

29. The Western Union Telegraph Company.

Dated, Raleigh, N. C., Aug. 10th, 1870.

Received at 3.15. Aug. 10th.

To John F. Pickrell, 42 Broadway:

Checked on you to-day for five thousand dollars; have written.

JNO. D. WHITFORD.

1.60. 10—Collect.

(Endorsed:) "John D. Whitford. Aug. 10th, 1870."

180 EXHIBIT P., No. 21.—R. E. S., *Ex'r.*

10. The Western Union Telegraph Company.

Dated, Raleigh, N. C., May 25, 1871.

Received at 11.10 a. m., May 25, 1871.

To John F. Pickrell, 42 Broadway:

Have been absent since Friday last; will hear from me respecting iron matters in due time.

JONH D. WHITFORD, *Agent.*

16—D. H. 82.
N. K.

(Endorsed:) "Raleigh, May 25, '71. John D. Whitford."

181 EXHIBIT P., No. 22.—R. E. S., *Ex'r.*

RALEIGH, *March 20th*, 1869.

MR. PICKRELL:

MY DEAR SIR: Your letter of the 18th inst., and copy of one to Gen. Stubbs, reached me a moment since.

We do fully appreciate your situation in regard to the iron contract, and B. and myself have moved as fast as the interest of all parties, and particularly of them north, would justify.

The Government securities purchased in New York, and sent on here by me, were so appropriated by the company that it would require a longer time to get possession of a sufficient amount of them to pay for the iron in Norfolk than it would to raise the money outside. I concluded, therefore, to make the purchase from the Raleigh and Gaston road, and have been getting together the money to pay for it. I will require some work to get up the am't—65 or $70,000. But it certainly will be done, and the iron paid for as speedily as possible. In the meantime, we are willing to make such an arrangement respecting the payment of interest as you may think proper and just. B., as well as myself, is anxious, very anxious to close up the iron matter to the satisfaction of the importers. There is such a thing sometimes, you know, as hastening slowly and going ahead quite rapidly. Now I believe in the Quaker's motto, if not it Dutchman and Yankees, while, on the other hand, to be in too great a hurry sometimes puts one back. To complete this purchase from the Raleigh and Gaston railroad, I shall have to go to New York, and B. desired me to stay hereabouts till his matters were in better state, and I think myself it is essential, for your own interest, that I should do so. Tell Mr. Baltzer the iron will be taken in Norfolk, and paid for. This is as certain as anything can be that has not transpired, and we are making every effort, we again repeat in our promise, to close it without delay.

As to the sample bond we will send it as soon as we can get
182 hold of it from the engraver. Mr. Battle promised me to attend to it and that not a moment should be lost in forwarding one to you. The treasurer has been abent for a week, it is said, visiting his home west, and is expected back to-day.

We received by express the old bonds, which will be exchanged, and the new ones returned to the bank as early as practicable. I am watching Swepson's $3,000,000, the last to be issued for the $7,000,000 aid to his road; in no event must they be allowed to go in market until our matters are all in a satisfactory condition. Mr. Battle says he will watch and keep us advised. At present the amendment to the charter, making the $300,000 additional appropriation referred to, has not been accepted, therefore they would hardly be risked on the market. As to paying interest, &c., &c., &c., we know no more than yourself. But that it will be paid, in the own good time of Jenkins & Co., I have not one particle of doubt. Matters in this State seem to be favorable enough at present, though in South Carolina I think railroads will suffer, as the Governor is violently opposed to going into debt for any. Things look blue over that way from what I can learn, and I now expect, without knowing, all appropriations will be killed. Whenever I can get hold of any information of the least importance, will communicate it to you of course, and if you do not hear from me it will be because I have nothing to give you. I have written to Mr. Timpson to-day that we cannot get hold of the Government securities to sell, whether they rise or fall. I think myself money could be made by selling and buying again. Remember me to Greenleaf, Norris & Co., if you please. I will return to New York as soon as I can get off from here, or from the State. Have had every act from the first charter of the Chatham road before the war, up to this date, including every amendment or law making appropriations or authorizing the issuing of bonds for the same, copied under the supervision of Mr. Battle, and will forward them to you in a day or two. You can then have them presented or not, as you deem proper. But for the situation of
the Chatham road there never would have been a jar about
183 it; other railroad men are frightened out of their wits about it,
and hence the violent opposition to it by Gen. Little and Gov. Henly. Mr. Battle wishes to be kindly remembered.

Yours truly,

JOHN D. WHITFORD.

Have written you an easy letter to read, if it was written in the dark. Don't forget my regards to Mr. Hardy.

(Endorsed:) John D. Whitford, March 20, 1869. Ans. 25th.

184 EXHIBIT P., No. 23.—R. E. S., *Ex'm'r.*

NEW BERNE, *May 30th*, 1869.

Mr. PICKRELL.

MY DEAR SIR: I have been too unwell ever to go out since my arrival here a week ago, though trust I will be out in a day or two again. Gen. Hawkins may wish to use a few hundred dollars, and if he should I authorize him to check on you for the amount, which you would honor. Do so, and I will arrange it or pay it on my arrival in N. Y. Gen. Stubbs wishes you to keep to yourself the sale

of the bonds of $150,000, with the certificate, as he fears, if known, it would do harm, therefore say no more about it at present. Gen. Hawkins writes me from Williamston that all is now going on well. I sent him a large force from New Bern, and the people over that way at last begin to see we are in earnest, and rejoice at the prospect of the construction of the road. Dr. Hawkins and myself, if nothing happens to prevent, will be in N. Y. in a week or two, as the Dr. is fixing up for his annual meeting and wishes our aid in the matter. His meeting is about six weeks off.

We have had more shooting in this happy land. Our people are so tormented, the only wonder more is not done. Yet it will cause the innocent as well as the guilty to suffer, and will be magnified and grow to large proportions by the time it reaches Harper's, Greely's, and other radical sheets in your latitude. It seems that this section of country will never become settled. My kind regards to Mrs. Pickrell and to Spriggs. My daughter is much pleased at the prospect of the "Convent of the Sacred Heart." I expect to take her on in the summer. One of my sweethearts, you see, Miss Sophy Manly, is married. "Pity the sorrows of a poor old man." However, plenty more of them of the same sort, widows and young ladies, equally as pretty and sweet. Not sour grapes. No, no, no, not at all. My sweet hot-house six dollars per pound.

Truly, JOHN D. WHITFORD.

(Endorsed:) "J. D. Whitford, May 30, 1869. Ans. June 2."

185 EXHIBIT P. No. 24.—R. E. S., *Ex'r.*

CHATHAM RAILROAD COMPANY, PRESIDENT'S OFFICE,
RALEIGH, N. C., *Feb., 8th*, 1870.

JOHN F. PICKRELL, Esq.

DEAR COL.: Upon an examination of returns made by you and Col. W. in here last, I find they do not conform to our manner of keeping our accounts, not having been stated as fully as we would like to have them, and in that form. I send you enclosed form, acceptable to us, not at all varying your account, which you will please make out as of that date, and let us have it as soon as we can get it. We may be called upon by a committee soon to make our exhibit, and would like to have it in ship-shape. I send you also reports to be signed by you for amounts paid by our treasurer account of your contract. I have within this enclosed letter for Col. Whitford. Please attend to this at once, and greatly oblige,

Yours truly, W. J. HAWKINS.

(Endorsed:) "Dr. W. J. Hawkins, Feb'y 8, 1870, ans"; and also endorsed "J. F. Pickrell, Esq., and letter for Col. Whitford."

186 EXHIBIT P., NO. 25.—R. E. S., *Ex'r.*

RALEIGH AND GASTON RAILROAD COMPANY,
PRESIDENT'S OFFICE,
RALEIGH, N. C., *March* 2, 1870.

Mr. PICKRELL.

MY DEAR SIR: I herewith send by request of Dr. Hawkins, president, &c., four vouchers of amounts paid you on contract. It is necessary for you to sign these, which please do at once, and forward to Maj. W. W. Vass, treasurer Chatham railroad, Raleigh, N. C. The amount in different ways is in my hands. The Dr. goes before the committee on Friday, and I am quite convinced his showing will agreeably surprise his friends and confuse his enemies. Stubbs will come up to morrow, special order, at 12 o'clock.

Nothing from repealing act to-day. It is not yet a law, but imagine will be in a little while.

Gen. Littlefield is still here. Mr. Swepson went up the country last night to see, it is said, his wife, and will return to-night. They will be summoned before the Legislature, in committee of the whole, as well as before the Bragg committee. It seems to me some, who seem anxious to get what they can out of these men, are pursuing the course to drive them away, as no one, guilty or innocent, cares about standing up and being ridiculed by political friends and enemies.

Very truly, JOHN D. WHITFORD.

187 EXHIBIT P., NO. 26.—R. E. S., *Ex'm'r.*

RALEIGH, *May 8th*, 1871.

Mr. PICKRELL:

MY DEAR SIR: Yours of the 5th and 6th, with Shearin's, I received this evening. All your matters down this way have been and will be attended to as you desire, with a view to your interest.

The deed in Mr. Battle's hands will be changed when the title is transferred from Col. Little, as you request.

I will make known your wishes about the management of plantations, &c., to Col. Little, who will, no doubt, take pleasure in carrying them out.

As to Baltzer's matter, notwithstanding he loses no opportunity to abuse me, I lose none, nor have I, in trying to get Dr. Hawkins up to a fair settlement with him, and hope, ere long, to be able to make him, Baltzer, a proposition he may accept, or at least, not reject hastily. But say nothing to Baltzer about it, for, if I should fail in getting the authority, he would condemn me for alluding to it, and put it down as deception, &c.

Gov. Manly's family is well.

Col. J. Manly, from Texas, is home. He, you know, is the oldest son, about fifty in years, and has lived in Texas for twenty years or more. I took tea with him Saturday night, we being old friends, though not quite schoolfellows. Mrs. Manly was a great sufferer, and

is yet, though, on the arrival of her son, Friday, rallied and is now up.

Col. Little's family wish to be remembered.

Stock on the Atlantic Road is very low—would not risk over $5 per share on it, and doubt whether it would bring that cash.

Will write to Newberne to-night about it, and write you again when I receive answer.

Truly, JOHN D. WHITFORD.

(Endorsed:) "Raleigh, May 8, '71. John D. Whitford."

188 EXHIBIT P., No. 27.—R. E. S., *Ex'r.*

RALEIGH, *April 15th*, 1871.

MR. JOHN F. PICKRELL, *New York.*

DEAR SIR: I sent you a few days ago a copy of report of Senate investigating committee of last Legislature, also speech Maj. Graham giving a pretty clear idea of the condition of the debt, etc., of North Carolina.

In reply to your letter of the 11th inst., received on yesterday, I have to say that I have quite recently had several interviews with Dr. Hawkins in reference to Messrs. Baltzer & Taaks' matter, and on his return to this place, will lay your proposition or suggestion before him, and endeavor to get him to act without delay. Not long since I wrote to Capt. Durham respecting your claim, and trust he will soon attend to it.

I am glad to hear of the safe arrival of Maj. Latham and Capt. Jarvis in your great city, and wish, as they described it, it had been in my power to have accompanied them North. I hope they may have a good time and plenty of fun, which they both delight in.

The season is very forward here, vegetation is growing rapidly.

No doubt you have seen in the papers a notice of the great fire in New Berne which burned around our friend, Charles' Church. I hear it was with much difficulty saved.

Truly yours, JOHN D. WHITFORD.

(Endorsed:) "Raleigh, N. C., April 15th, 1871. Col. John D. Whitford."

EXHIBIT P., No. 28.—R. E. S., *Ex'm'r.*

Dr. *The Chatham Railroad Company in Account with John F. Pickrell & Co.* *Cr.*

1868.							
Sept. 10.	To proceeds of loan	$97,266 67		Dec. 21.	By 387 North Carolina bonds sold at N. Y. Stock Ex., 63 to 61½	$238,005 00	
	interest and commissions	2,733 33			1,000 No. Ca. bonds, sold at 61½ to 1½ p. c., 60	600,000 00	
			$100,000 00		100 North Carolina bonds sold to Gen. Littlefield, 60 x	60,000 00	
Oct. 19.	check	$42,636 89					$898,005 00
	"	63,500 00					
			106,136 89				
1869.							
March 1.	rec'd on acc't of contract No. 1	$93,950 00					
	rec'd on acc't of contract No. 10	62,050 00					
			156,000 00				
	chairs and spikes, Voucher						
29.	No. 2	$3,544 42					
	locomotive, K. P. Battle	13,071 00					
	ins. iron to Portsmouth	2,433 68					
	storage on iron No. 4	61 00					
	Barney, Butler & Parsons No. 5	100 00					
	330.6.2.26 rails No. 6	50,023 50					
	770.6.1.3 No. 7	61,132 12					
	330.16.0.15 No. 8	26,252 82					
	1,004.9.0.18 No. 9	79,743 79					
			235,012 94				
	Balance		299,855 17				
			$898,005 00		By balance acc't rendered		$898,005 00
				1869.			
				June 23.			$299,855 17

E. & O. E.
New York, 23 June, 1869.

JOHN F. PICKRELL & CO.

Dr. *The Chatham Railroad in Account with John D. Whitford, Agent.* *Cr.*

1868.				1868.		
Dec. 21.	For 244 U. S. bonds @ 67, $111		$270,840 00	Dec. 4.	By cash, as per acc't enclosed A	$299,855 17
1869.						
Feb. 11.	Tredegar Iron Co		1,732 50			
12.	Barney, Butler & Parsons		250 00			
June 23.	certified ch. on Continental Bank, N. Y.		10,000 00			
			$282,822 50			
	Balance cash on deposit		17,032 67			
			$299,855 17			$299,855 17
				1869.		
				June 23.	By balance acc't rendered	$17,032 67

E. & O. E.
June 23d, 1869.

JNO. D. WHITFORD, *Agent.*

NOTE.—There are now in the city of New York sixteen hundred and ninety-eight North Carolina bonds issued to the Chatham Railroad Co. (high number) as follows:

Up for iron in Continental Bank	1,150
Deposited in bank	400
Deposited with Greenleaf, Norris & Co.	100
" " Jno. F. Pickrell	48
	1,698

JNO. D. WHITFORD, *Agent.*

191 EXHIBIT P., No. 30.—R. E. S., *Ex'r.*

Dr. *J. F. Pickrell in Account with W. J. Hawkins, Pres't and Agent Chat. R. R. Co.* *Cr.*

1868.				1868.			
Dec. 21.	To sales of N. C. State bonds, as follows:			Sept. 10.	By cash p'd you, net loan	$87,266 67	
	Sold 387 bonds at N. Y. Ex., 62 61½	$238,005 00		Oct. 19.	" " " " per check	42,636 89	
	" 1,000 bonds at N. Y. Ex., 61½ 60	600,000 00			" " " " " "	63,500 00	
	" 100 bonds at N. Y. Ex., 60.1	60,000 00					$203,403 56
	Say 1,487 bonds, netting	$898,005 00	898,005 00		" commis'ns and int.		2,733 33
				1869.			
				Nov. 1.	" insurance on iron	2,113 68	
				1.	" storage "	61 60	
				1.	" Barney, Butler & Co., att'neys' paid fee	100 00	
							2,275 28
					" cash rec'd on ac't contract with your road		389,737 66
					By balance		299,855 17
			898,005 00				$898,005 00
1869.				1869.			
June 23.	To bal. due Chat. R. R. Co.		$299,855 17	June 24.	By Jno. D. Whitford, g'l agent, trans. to him		$299,855 17

E. & O. Ex.

(Signed) J. F. PICKRELL & CO. New York.

Dr. *Jno. D. Whitford, Agent in Account with W. J. Hawkins, Pres't Chat. R. R. Co.* *Cr.*

1868.			1868.		
Dec.	4.	Cash turned over to me be by J. F. Pickrell Co. $299,855 17	Dec.	2.	By cash paid for 244 U. S. bonds—67 a 1.11. $270,840 00
			1869.		
			Feb.	11.	" paid Tredegar Co. for bill 1,732 50
					" " Barney, Butler & Parsons 150 00
			June	23.	" cash remitted this day being certified check on Con. Bank 10,000 00
					Balance 17,032 67
		$299,855 17			$299,855 17
June	23.	To bal. due C. R. R. Co. $17,032 67			

(Signed) J. D. WHITFORD, *Agent.*

New York, June 23, 1869.

NOTE.—State as before the other bonds are, &c., &c.

1,150 Continental Bank.
400 " "
100 Greenleaf, Norris & Co.
48 J. F. Pickrell.

1,698

193 EXHIBIT P., No. 32.—R. E. S., *Ex'm'r.*

Rec'd of W. J. Hawkins, pres't Chat. R. R. Co., bonds of State N. C., issued under an act, numbered from 1 to 1185, both inclusive	1,185
Also bonds State N. C., issued under act Legislature of 15th Aug., 1868	1,900
Dr'ft of M. S. Littlefield for sale of 100 bonds accepted by us	100
	3,185
Cr. By sale of bonds	1,487
Turned over to J. D. Whitford, ag't	1,698

194 EXHIBIT P., No. 34.—R. E. S., *Ex'r.*

Chatham Railroad in Account with John F. Pickrell.

1868.		Cr.		
Sept.	1.	By rec'd com's stamp on $100,000 loan		$300 00
Oct.	15.	" " Baltzer & Taaks, ret'd com's		1,250 58
Nov.	2.	" " " & statement rendered Dr. Hawkins		11,794 27
	23.	" " Rodgers, ret'd com's		225 00
Dec.	2.	" " Baltzer & Taaks, p. statement herewith		937 44
	26.	" " Baltzer & Taaks, ret'd com's		4,177 47
Dec.	15.	" cash from Whitford, viz., W. C. Schafer's acc'ps	$6,638 67	
		" dist. off	200 00	
			$6,438 67	
		" cash p'd by me	1,438 67	
				5,000 00
1869.				
Feb'y	13.	" cash from Whitford		1,000 00
June	4.	" For compromise in case of "J. F. Carson"		75 00
Sept.	3.	" Baltzer & Taaks, check	$126 99	
	"	" W. & T. R. R'd express charges on exchanged bonds	35 39	
				162 38
				$24,922 14

Debits.

1868.			
Nov.	23.	To expenses to Raleigh	$200 00
Dec.	4.	" Whitmore, storage on iron	61 60
	8.	" telegram to & from Portsmouth	6 60
	18.	" ins. iron per Carver, & policy	162 05

1869.			
Jan'y 2.	To telegram to Whitford, Hawkins and back, 4		$18 65
14.	" ins. 8 cargoes iron to Portsmouth		1,719 41
16.	" Tredegar Co.'s bill		3,544 42
M'ch 2.	" expenses to Raleigh		150 00
18.	" telegrams to Whitford, M'ch 11, 16, 18		8 10
195 Jan'y 19.	To Baltzer & Taaks, 10 bonds		6,150 00
	" Whitford, sundry times		856 80
Jan'y 19.	To Hawkins, do.		300 00
June 22.	" Baltzer & Taaks, bill ins. iron hence to Portsmouth, Va.		232 40
	" Butler, Barney & Parsons' bill, attorneys' advice & drawing agreem't iron purch'd B. & T.		100 00
Sept. 3.	" express charges collect dr'ft on R. & G. R. R'd for Anna McCunny, cargo iron		232 00
Nov. 20.	" expenses to Raleigh		100 00
1870.			
Oct. 3.	" paid Julian (broker) com. purchase		8 73
	Balance acc't due road		11,071 38
			24,922 14
	By balance		11,071 38

E. & O. E.

New York, June 30, '71.

For JOHN F. PICKRELL,
E. GALPIN.

196 THURSDAY, *September* 11, 1879.

Met pursuant to adjournment.

Present: Joseph B. Stewart, Esq., counsel for complainants; Thomas C. Fuller and J. B. Bachelor, Esqs., counsel for defendants.

Cross-examination of JOHN F. PICKRELL, a witness on the part of the complainants, resumed.

Counsel for defendants other than John F. Pickrell waive a further cross-examination of witness John F. Pickrell.

The redirect examination of John P. Pickrell is thereupon commenced by the complainants.

Counsel for the defendants object to the redirect examination except as to those matters upon which the witness has been cross-examined, and ask for the reading of the cross-examination, which is as follows:

"Cross-examination by Mr. FULLER:

Cross-Q. 194. When did you leave your home in North Carolina to come to New York for the purpose of this examination?

A. On Monday morning, the 24th day of March, 1879."

Complainants' counsel states that the defendant, John F. Pickrell, who was called and examined as a witness on the part of the complainant, was called to prove, among other things, and especially certain papers, contracts, correspondence, telegrams, and accounts sent to and received by him from his co-defendants, or some of them, according to the respective dates, tenor, and purport, notice being given to and demand made upon the other defendants, and especially the corporation defendant, to produce certain papers proved by the witness to be in their possession, which papers were not and have not been produced; that the direct examination was suspended and the witness turned over to the defendants'

197 counsel, who commenced their cross-examination, as shown by the record, and then asked an indefinite postponement, stating that they were not prepared to proceed with the cross-examination in consequence of not having the material documents present for such cross-examination, which complainants' counsel supposed would be produced on the cross-examination; that the abrupt termination of the cross-examination by the defendants devolves upon the complainants to resume by redirect the examination of their witness, with the view of bringing the facts involved in the issues in this suit before the court to the best of their ability.

Counsel for the defendants as above aver that no notice to produce any document or paper whatsoever was ever served upon them or their counsel till after the examination-in-chief of John F. Pickrell was concluded and his cross-examination had been commenced and suspended; that such notice to produce as was served was not to produce any document or paper before the present examiner in the city of New York, and upon the examination of John F. Pickrell, but was to produce certain books and papers in said notice particularly described and specified before Thomas R. Purnell, Esq., special examiner in this case, at his office in the city of Raleigh, in the State of North Carolina, upon the examination of one William W. Vass, a witness summoned and examined by complainant on the —— days of September, 1879.

Counsel for defendants further state that upon the examination of said witness Vass at the time and place hereinbefore stated the counsel for defendants as above answered said notice, and offered to produce all the books and papers called for in said notice so far as the same were in the possession or under the control of defendants aforesaid, and to furnish copies of the same whenever complainants' counsel should desire them, and that such answer by the counsel of defendants as above is noted in the deposition of said witness Vass by Mr. Examiner Purnell, and counsel for defendants as above are ready to make other and further response to said notice according to its terms and the exigency thereby.

198 Counsel for complainants states that the notice served for the production of papers by the defendants is part of the record, and will speak for itself, both as to its extent and sufficiency.

The counsel for the complainants further states, in response to the matters spread upon the record by defendants' counsel, that the papers and documents, the production of which were called for, were

designed to be used, among others, upon the examination of William W. Vass, the secretary and treasurer of the defendant corperation, and identified with their interests, as shown by his testimony; that in question No. 29 the counsel for the complainant called upon the witness to answer whether or not he was in the possession of the alleged contract between the defendant company and John F. Pickrell & Co. for building the first section of said company's road extending from Raleigh to Haw river, and if he had such paper, whether he would produce the original for inspection and make a copy thereof part of his answer to said 29th question; that the witness, in answer thereto, stated in substance that he had said paper in his possession, and then and there produced the same, and made a copy thereof part of his answer, marked V., No. 1; but when proceeding to produce it was not able to do so, because said paper was in possession of defendants' counsel, who did not deliver the same to the witness, but on the contrary made objection thereto, as will appear by the record in that behalf made at the time of asking the question, the answer, offer, and failure to produce for the reasons stated.

The counsel for the complainants further states that, so far from there being any papers, records, or documents produced or offered to be produced at the time referred to, or at any other time by the defendants, under said notice, to produce, that they entered of record that they would produce nothing unless properly called upon, as will appear by said record, and that no papers ever have been produced.

199 Q. 195. In your preceding direct examination, and in answer to question No. 150, you testified as to a certain paper purporting to be an agreement between John F. Pickrell & Co. and the Chatham Railroad Company, dated March 6th, 1869, the original of which said paper was not produced; have you or have you not since your examination was adjourned been able to find or possess yourself of said original paper?

(Objected to.)

A. I have not.

Q. 196. Will you now please look again at the copy then produced and state, to your best recollection, where said paper was written, by whom written, by whose request, and what reason, if any, was assigned for executing the same?

(Objected to.)

A. It was handed to me by Mr. Kemp P. Battle, the attorney of the company, by whom, I believe, it was drawn during the evening of the day it was signed, at the Yarboro House, in Raleigh, Mr. Battle, Dr. Hawkins, Mr. Whitford, and myself being present. Dr. Hawkins said he wanted the finished portion of the work closed up.

Q. 197. Were you or were you not yourself personally present when said paper was written, and did you or not request that such agreement should be prepared and executed?

A. I didn't see the paper written at all. It was handed me by

Dr. Hawkins. I simply acquiesced in the execution of it. I did not request the paper to be executed. The suggestion came from Dr. Hawkins, and I acquiesced in it.

Q. 198. Please look again at the signatures of said paper, where it is signed "John F. Pickrell & Co.," and state who was included in the word "Co.," or constituted the firm, if any, of whom you was then a member, and doing business under such name and style?

(Objected to.)

A. The firm name of John F. Pickrell & Co. was assumed for building the Chatham railroad. The profits of the work were to be divided between John D. Whitford and myself, he to receive two-thirds of the profits and I to receive one-third.

Q. 199. Is the John D. Whitford who constituted "and Co."
200 in said assumed firm the same who appears as one of the witnesses to said agreement?

A. Yes, sir.

Q. 200. Did or did not any one other than said John D. Whitford have or receive any interest in the profits derived by said assumed firm from any work done on said Chatham railroad? And if yea, state, to the best of your knowledge, information, and belief, who such other person was, if any, and what interest, if any, he was to have therein.

(Objected to.)

A. I don't know.

Q. 201. Were you or were you not informed by said John D. Whitford that any other person or persons was interested in said agreement besides himself and yourself? And if yea, state who said person was, to the best of your recollection, knowledge, and belief.

(Objected to.)

A. Col. Whitford repeatedly told me that other persons were interested, but never gave me their names.

(Objected to.)

Q. 202. Did you or did you not add the word "& Co." to your name when you signed said agreement, or did you or did you not sign said name at the request of any one then present? And if yea, please state whom, to the best of your knowledge and recollection. Please state what was said, if anything, and by whom, as a reason therefor?

(Objected to.)

A. I cannot possibly recollect all the conversation taking place. We were there two hours talking. I assume that I have a correct copy of the same in my hand. I further assume, as a matter of course, that John F. Pickrell & Co., having contracted to build the Chatham railroad, I signed my name to this paper.

Q. 203. The preamble of said agreement reads as follows:
201 "Agreement between the Chatham Railroad Co. and John F. Pickrell and Co., of New York." Was there or was there not

a firm of John F. Pickrell & Co. then doing business in the city of New York, of which you was a member, and for whom you signed?

(Objected to.)

A. There was no such firm as John F. Pickrell & Co. in New York, except for the purpose already stated.

Q. 204. The said preamble further states that said paper of the 6th of March, 1869, was "made in pursuance of a preliminary contract, dated September 1st, 1868," and "Exhibit P., No. 3" of your answer to the 33d question is addressed and worded in part as follows: "New York, Sept. 1st, 1868. To the president of the Chatham R. R. Co., William J. Hawkins, Esq. Sir: On behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Charles Gould, Esq., I propose as follows." Please look at said exhibit and state whether or not said Greenleaf, Norris & Co. and Charles Gould, Esq., were included, or in any manner intended to be included, as parties comprising the firm of John F. Pickrell & Co., who purport to sign said agreement of March 6th, 1869.

(Objected to.)

A. They were not intended to be included, and were not, in fact, included.

Q. 205. In your answer to questions 39 and 40 you stated in substance that "said Greenleaf, Norris & Co. was to furnish money for said Chatham Railroad Company "through you upon satisfactory securities, which said proposal was reduced to writing and sent to the Chatham Railroad Company, and that you had not the original in your possession or a copy thereof. Will you now please state, to the best of your knowledge and recollection, what was the contents of said proposal so made by Greenleaf, Norris & Co. and Gould, through you or at your request, to said Chatham Railroad Company?

(Objected to.)

202 A. Greenleaf, Norris & Co., in a letter addressed to me, bound themselves to furnish means, upon satisfactory securities, all the money I might require in building the Chatham railroad. That agreement was sent by me to the Chatham Railroad Company, at Raleigh, either by mail or by John D. Whitford; I think the latter.

Q. 206. Previous to the writing of said letter by said Greenleaf, Norris & Co. and Gould, did you or did you not have any conversation with any of the officers of said Chatham Railroad Company about the writing of the same, and the object thereof? And, if yea, please state what the facts were, to the best of your knowledge and recollection.

(Objected to.)

A. Yes: I had conversations with them, the officers of the company, and the letter from them was obtained for the purpose of showing my ability to build the road; I will add that previous to receiving the letter I had no acquaintance whatever with the firm

of Greenleaf, Norris & Co.; the signature to that letter of Greenleaf, Norris & Co. was obtained by Mr. Charles Gould.

Q. 207. You speak of showing your ability to build the road of the Chatham Railroad Company; to avoid any ambiguity I will ask you to be so good as to state what part you were personally to perform and at what place and locality in the building of said road, and what part, if any, were to be performed by others.

(Objected to generally, and specially because the contract introduced by complainant fully answers the above question; it speaks for itself.)

The complainants' counsel states that when the witness, testifying in the previous part of the examination as to what transpired under said contract, and his relation thereto as to performing any work on said road personally, or employing any one else to work thereon, in answer to questions 35 to 51, the witness stated that he never
203 had done any work on said road, either in person or through others as contractors; that he never was on the road, conversed with, or knew who the engineers were, and knew personally nothing whatever about it; in consequence of which several answers and the apparent bearing upon his last preceding answer, the question last asked is propounded, not to in any manner vary the written contract, but simply to ascertain what the witness was personally to do or did do in the building of said road under said contract of the 6th of March, 1869.

A. All that I undertook to do, as we agreed upon, was to furnish the money, and that to be done in New York.

Q. 208. The fourth paragraph of said agreement of March 6th, 1869, provides that the work mentioned in said contract, "and all rolling-stock, iron, &c., are to be finished and delivered on or before the first day of August, 1869;" did you, or did you not, either as an individual or as firm of John F. Pickrell & Co., do, or cause to be done, any work on said Chatham Railroad, or on the first section thereof, as provided in said agreement, or to furnish any iron or material therefor between the said 6th day of March and 1st of August, 1866; and if yea, please state what it was?

(Objected to.)

A. I did not.

Q. 209. The fifth paragraph of said agreement reads as follows: "In consideration of the faithful performance of this contract the Chatham Railroad Company agree to pay from time to time, as the work progresses, six hundred and eleven thousand dollars ($611,000), said Pickrell & Co. accepting bonds of the State at sixty per cent. as per statement rendered;" did you, or did you not, receive from said Chatham Railroad Company bonds of the State of North Carolina at the rate of sixty cents on the dollar, or the sum of six hundred and eleven thousand dollars in any other way for work and labor done on said road, or material supplied by you therefor subsequent to the 6th day of March, 1869?

(Objected to.)

A. I do not.

204 Q. 210. The last portion of said fifth paragraph, in referring to said State bonds, reads as follows: "As per statement rendered;" will you please state to the best of your knowledge and recollection what statement was rendered, and by and to whom rendered, which is made part of said agreement, and have you the same; and if yea, will you produce the original, or a copy thereof, as part of your answer?

(Objected to.)

A. I haven't the original statement, nor a copy.

Q. 211. Will you now please state to the best of your knowledge and recollection what statement is referred to in said agreement?

(Objected to.)

A. The statement of the sale of the bonds.

Q. 212. Do you, or do you not, mean to say that the bonds which were to constitute six hundred and eleven thousand dollars, at the rate of sixty cents a dollar, had already been disposed of at the date of said agreement, to wit, the 6th day of March, 1869?

(Objected to.)

A. Yes, sir.

Q. 213. Were you, or were you not, in possession of the proceeds of said bonds, to wit, said six hundred and eleven thousand dollars (611,000); and if not, please state who was in the possession of the same on the said 6th day of March, 1869?

(Objected to.)

A. The proceeds of the bonds were to my credit as agent with Greenleaf, Norris & Co., the brokers; I looked at it as an account distinct from my business, and never used it for a penny; by directions of Dr. Hawkins I transferred the proceeds of all the bonds to John D. Whitford.

(Answer objected to.)

Q. 214. In the preceding part of your examination your attention was called to five papers purporting to be accounts
205 current rendered between John F. Pickrell & Co. and John D. Whitford, agent, and John F. Pickrell, in their dealings with the Chatham Railroad Company, or with William J. Hawkins, agent thereof, and described as Exhibits P., No. 28, P., No. 29, P., No. 30, P., No. 31, and P., No. 54, respectively, the four first named of which you say you did not remember as being on your books, while the last, P., No. 34, was on your books. I will now ask you to look again at said account, to wit, P., No. 28, and P. No. 29, the first being described as "The Chatham Railroad Company, in account with John F. Pickrell & Co.," and No. 29 as "The Chatham Railroad Company, in account with John D. Whitford, agent," and state whether or not you now recollect any more distinctly whose handwriting appears upon the face of said accounts, and by whom the same was prepared.

(Objected to.)

A. I really don't know whose handwriting it is, the two papers P., 28 and 29; I do not know in whose handwriting they are; the word "copy" at the head of each paper seems to me to be written by Dr. Hawkins.

(Answer objected to.)

Q. 215. Please look again at P., No. 28, first at the debit side thereof, commencing September 10, 1868, "To proceeds of loans $972.66," down to the last four items, to wit:

630. 6.2.26.	Rails	No.	6	50	023	51
770. 6.1. 3.	"	"	7	61	132	12
330.16.0.15.	"	"	8	26	252	82
1,004. 9.0.18.	"	"	9	79	713	79

and state whether or not the said account correctly describes any dealings in the way of a debit you ever had with said Chatham Railroad Company, and whether or not you furnished the said railroad company the money and rails therein described.

(Objected to.)

A. Yes, sir.

206 Q. 216. Now, please look at the credit side of the account, P., No. 28, which reads as follows:

1868.

Dec. 21.	By 387 North Carolina bonds sold at New York Stock Exchange, 63, @ 61½	$238,005
	" 1,000 North Carolina bonds sold at 61½ to 1½ per c't, 60	600,000
	" 100 North Carolina bonds sold to General Littlefield, 60	60,000
		$898,005

and state whether or not the said credit side of said account represents any dealings you ever had with said Chatham Railroad Company.

(Objected to.)

A. They do.

Q. 217. Now, please look again at said P., No. 29, headed "The Chatham Railroad Company in account with John D. Whitford, agent," and state whether the debit and credit items on said account represent any transactions of which you have any knowledge, or to which you had any relation in your dealings with said Chatham Railroad Company, or said John D. Whitford, as agent or otherwise.

(Objected to.)

A. They do not.

Q. 218. Will you please look again at said account, P., No. 29, and

especially at the balance on the debit and credit side thereof, to wit, $299,855.17, and also at the memorandum at the bottom thereof in the words: "Note.—There are now in the city of New York sixteen hundred and ninety-eight North Carolina bonds, issued to the Chatham Railroad Company (high number), as follows:

Up for iron in Continental Bank	$1,150,000
Deposited in bank	400,000
" with Greenleaf, Norris & Co.	100,000
" " John F. Pickrell	48,000
	$1,698,000

JOHN D. WHITFORD, *Agent*."

207 and state whether or not the said accounts, P., No. 28, and P., No. 29, do not show the same items or balance, and whether or not the bonds, or any of them, noted at the bottom of said accounts are such as with which you ever had any dealing.

(Objected to.)

A. They do not show the same items; they show the same balance; the bonds at the bottom all passed through my hands, and I recognize the statement as showing the position of the bonds at the time.

Q. 219. Now, please look at P., No. 30, being written in pencil and headed "Dr. J. F. Pickrell in account with W. J. Hawkins, president and agent Chat. R. R. Co., Cr.," and state whether or not you know the said handwriting, and if the same represents transactions both as to debit and credit side of said account which transpired between yourself and said W. J. Hawkins, president and agent of the Chatham R. R. Company?

(Objected to.)

A. I do not recognize the handwriting; the figures show my transactions with the Chatham Railroad Company and W. J. Hawkins, its president.

Q. 220. Will you please look at said Exhibit P., No. 31, being also written in pencil and written at the top "Dr. Jno. D. Whitford, agent, in account with W. J. Hawkins, pres't Chatham R. R. Co.," and state whether or not you know the handwriting of said account, P., No. 31, and whether or not the same refers to transactions with which you have had any relation in reference to said Chatham Railroad Company and said Whitford and Hawkins?

(Objected to.)

A. I do not know the handwriting and do not recognize the transactions as being those I had with the Chatham Railroad Company, or said Whitford and Hawkins, except so far as the balance of $299,855.17 run through all these accounts and show their origin.

208 Q. 221. Referring again to said Exhibit P., No. 28, and to the quantity of iron rails described in vouchers 6, 7, 8, and 9, please state whether or not you have or ever had the bills of lading

which shipped and delivered the iron therein described; and if yea, will please produce the same as a part of your examination, and if not, will you please state where said bills of lading are, to the best of your knowledge?

(Objected to.)

A. I never had the bills of lading; I presume they are or were in the hands of the company.

Q. 222. Now, please look at Exhibit P., No. 34, headed "Chatham railroad in acc't John F. Pickrell & Co.," and state whether or not, to the best of your knowledge and belief, the said account, "Dr." and "Cr.," appears upon your books, and whether the same is correctly copied therefrom, and was or was not delivered by you to the said Chatham Railroad Company, or the president thereof?

(Objected to.)

A. Yes; it does appear upon my books and is correctly copied therefrom; I know nothing about its delivery whatever.

Q. 223. Where are your books containing said account, and will you produce the same as part of your evidence at the trial of this cause?

(Objected to.)

A. My books are in North Carolina, and I will produce them whenever I am requested to do so.

Adjourned to Friday, September 12, 1879, at 10 a. m.

209 FRIDAY, *September 12th*, 1879.

Present: Counsel as before.

Q. 224. Referring again to Exhibit P. No. 34, purporting to be "Chatham railroad, in acc't with John F. Pickrell," and on the debit side of said account, and under date of January 19, 1869, appears the following charge against said company, to wit: "Baltzer & Taaks, 10 bonds, $6,150." Will you please be so good as to state what bonds these were, and the reason of their charge against said company.

(Objected to.)

A. They were ten of the North Carolina State bonds that Baltzer & Taaks got from me in the settlement on account of the iron contract.

Q. 225. Do you not know where said bonds are and what disposition was made of the same?

A. I don't know where they are.

Q. 226. Did you or did you not purchase and pay for said ten bonds, and charge them to said Chatham Railroad Company, as shown in said account?

(Objected to.)

A. Yes, sir.

Q. 227. Now, please look at the credit side of said account, commencing Sept. 1st, 1868, and ending Sept. 3d, 1869, and state whether or not the credits there given the Chatham Railroad Company are such as were received and recognized by you as proper credits to be allowed said company, amounting in the aggregate to $24,922.14.

(Objected to.)

A. This amount is to the credit of the Chatham railroad on my books, less the debits, which leaves the credit $11,071.38.

Q. 228. Why was this account made out against the "Chatham railroad" instead of the Chatham Railroad Company?

210 A. I don't know; the Chatham Railroad Company was intended; there was no reason.

Q. 229. Please look again at the Exhibits P. No. 28, P. No. 29, Nos. 30 and 31, and state, to the best of your knowledge and recollection, from what source, by what means, and for what reasons, if any, those four papers came into your possession.

(Objected to.)

A. I presume they were sent to me by the Chatham Railroad Company, to be copied in my office and returned to the road.

Q. 230. In your preceding examination, and in answer to questions 130, 131, and 132, you spoke of having been requested to pay, and having paid, certain accounts to the Tredegar Company, at Richmond, Virginia, for iron, upon an account rendered, but which you never had ordered. Will you now please look at the account now shown you, made part of this question, and marked P. No. 35, headed "Tredegar Iron Works, Richmond, ———, John F. Pickrell & Co. in acc't with the Tredegar Company," embracing the following general items:

	$1,912 25
	7,486 75
	1,900 00
	864 00
Making a total of	$12,163 00

and state whether or not you, either as John F. Pickrell & Co. or John F. Pickrell, ever ordered the spikes and iron stated in said account from said Tredegar Company; and, if not, state, if within your knowledge, who, if any one, did make said purchase, and for what purpose.

A. I did not order them, and don't know who did.

Q. 231. Will you now please look at the three checks now shown you, marked P. No. 36, P. No. 37, and P. No. 38, which are respectively in the words and figures following:

211 No. 1018. NEW YORK, *May* 25, 1870.

Metropolitan National Bank, (six,) pay to the order of the Tredegar Co. nineteen hundred and twelve $\frac{25}{100}$ dollars.

$1,912.25.—P. No. 36.

JOHN F. PICKRELL.

(On the side:) John F. Pickrell, 42 Broadway.

No. 1036. NEW YORK, *June 18th*, 1870.

Metropolitan National Bank, (six,) pay to the order of Tredegar Co. seven thousand four hundred and eighty-six $\frac{75}{100}$ dollars.

$7,486.75.—P. No. 37.

JOHN F. PICKRELL.

(On the side:) John F. Pickrell, 42 Broadway.

No. 1040. NEW YORK, *June 28th*, 1870.

Metropolitan National Bank pay to the order of Tredegar Co. twenty-seven hundred and sixty-four dollars.

$2,764.—P. No. 38.

JOHN F. PICKRELL.

(On the side:) John F. Pickrell, 42 Broadway.

And state who drew and signed those checks, to whom delivered, and for what purpose?

A. I drew and signed these three checks and delivered them to the agent of the Tredegar Iron Company, in the city of New York.

Q. 232. At whose request, and for what purpose?

A. At the request of the Chatham Railroad Company, and to pay certain bills for chairs and spikes contracted by said company.

Q. 233. Were or were not the bills you so paid with said three checks the same, and the identical bills shown you as Exhibit P. No. 35, and are not the aggregate of the check and the aggregate of the bill identically the same?

A. No; it is not the identical bill; the aggregate is the same.

212 Q. 234. Are or are not the four items, as shown by Exhibit P. No. 35, the amounts that you paid by the use of said three checks?

A. Yes.

Q. 235. You have stated that the account P. No. 35, though containing the amount and items you paid with said three checks, is not the account as presented to you; have you the said accounts that were presented; and if yea, will you produce the same as part of your answer?

A. I haven't them.

Q. 236. Do you know where they are?

A. I do not.

Q. 237. Were the said three accounts as presented made out in your name or the name of the Chatham Railroad Company; please state to the best of your recollection?

(Objected to.)

A. In the name of the Chatham Railroad Company.

Q. 238. For what reason, if any, within your knowledge or information, was the said three accounts altered from the name of the Chatham Railroad Company, and aggregated into one account in the name of John F. Pickrell & Co., as shown by the account P No. 35?

(Objected to.)

A. I don't know.

Q. 239. Will you please look again at the said letter, January 8th, 1869, addressed to you by John D. Whitford, Ex. P., No. 14, and especially to the postscript of said letter; in other words, "Mr. Pickrell, you had better pay the Tredegar bill; if you desire it, I will send you an order on Greenleaf, Norris & Co. for the amount, or you can pay it, and I will give it on my return, just as you like; Hawkins would have sent the money, but deemed it best to keep the matter all in your hands, as I did not wish any bill for the articles in the hands of the treasurer, except from you as contractor, with your profit added;" and state whether or not said letter advises you for your reasons and inducement to pay said bill for said
213 iron and spikes, which were contracted for in the name of Chatham Railroad Company, as shown by your previous answer?

(Objected to.)

A. It does.

Q. 240. The said bill, P. No. 35, is made in the name of John F. Pickrell Co., but the checks are signed "John F. Pickrell;" why was the signature to the check made different to the party charged in the bill?

A. I don't know any reason whatever.

Q. 241. Had you or had you not at the date of said check, or between September 1, 1868, and June, 1870, a bank account in the name of John F. Pickrell & Co., and if yea, please state who were the other parties to the account besides yourself?

(Objected to.)

A. I don't know.

Q. 242. I will then ask you to be so good as to state if, at the date of the account, P. No. 35, you had a bank account in the name of John F. Pickrell & Co., which was subject to the payment of said bill; and if yea, who were the parties to the account; I mean the checks dated May 25, June 18, and June 28, 1870, the payment of which you have previously testified to; I mean also the bill without date?

A. I have three checks in my hand, dated May 25, June 18, and June 28, 1870, for $1,912.25, $7,486.75, $27.64, respectively; they are my checks, drawn by me to pay the Tredegar Iron Company's bills against the Chatham Railroad Company for the respective amounts.

Q. 243. The question I ask you is, whether the said three checks were paid from bank account in the name of John F. Pickrell, in which he was alone concerned, or from the bank account in which John F. Pickerell & Co. was concerned; and if the latter, then please state who were the other parties in the case?

A. No one else was concerned in the bank account on which these three checks were drawn but myself.

214 Q. 244. Please look again at Ex. P. 33, being a draft drawn for $60,000, dated Washington, Feb. 3, 1869, in favor of John

F. Pickrell, on Charles Gould, 58 Wall st., New York, and signed M. S. Littlefield, and state whether or not John F. Pickrell or John F. Pickrell & Co. ever received the said sum of $60,000 from said Littlefield or any one else in payment of said draft?

(Objected to.)

A. Neither ever received anything in payment of said draft.

Q. 245. Please look again at Ex. P. 28, being the account between "The Chatham Railroad Co. in account with John F. Pickrell Co.," and to the credit side thereof, where the following figures and words occur: "100 North Carolina bonds, sold to er. Littlefield, 60 x $60,000.00," and state whether or not said draft has any relation, and if any, what, to said $60,000 credit; and if yea, state to the best of your recollection the facts in relation thereto?

(Objected to.)

A. The relation between the two is that the one represents the other; the 100 bonds received the General Littlefield representing the debits, and the draft the credit.

Q. 246. Will you now please look at the two papers dated and worded as follows, respectively, commencing one at the word:

NEW YORK, *March* 14, 1872.

In consideration of the sum of one dollar to me in hand paid by John F. Pickrell, of the city of New York, have released, and do hereby for ourselves, our heirs, executors, and administrators, release and discharge the said John F. Pickrell, his heirs, executors, and administrators, of and from all claims and demands whatsoever, which we ever had against him by reason of any matter or thing whatsoever.

Witness our hand and seals, this fourteenth day of March, in the year one thousand eight hundred and seventy-two.

JOHN D. WHITFORD. [SEAL.]

Witness present:
JAMES H. LANGFORD.

215 And the other, commencing at the word:

NEW YORK, *March* 14, 1872.

In consideration of the sum of one dollar to me in hand paid by John F. Pickrell, of the city of New York, have released, and do hereby for ourselves, our heirs, executors, and administrators, release and discharge the said John F. Pickrell, his heirs, executors, and administrators, of and from all claims and demand whatsoever, which he ever had against by reason of any matter or thing whatsoever.

Witness our hand and seals, this fourteenth day of March, in the year one thousand eight hundred and seventy-two.

WILLIAM J. HAWKINS. [SEAL.]
By his Attorney, JOHN D. WHITFORD.

Witness present:
JAS. H. LANGFORD.

And state in whose handwriting said papers are, and for what purpose the same were executed, and from what contract or obligation between yourself and John D. Whitford and William J. Hawkins said papers were to be a release and discharge.

(Objected to.)

A. They are in the handwriting of John D. Whitford, and were executed entirely with reference to the Chatham railroad, and a release only from the Chatham Railroad, and a contract dated September 1st, 1868, and another the 6th March, 1869.

Q. 247. After the date of said release, did you ever have any further or other dealing with said Hawkins and Whitford in reference to said agreement?

A. No, sir.

(Subject to the objections as above, the counsel for the defendants as above proceeds to interrogate the witness as follows):

Cross-Q. 248. When did you first make the acquaintance of complainant, Herman R. Baltzer?

216 A. About the time of the signing of what is called the iron contract, but previous thereto.

Cross-Q. 249. Who introduced you to said Baltzer?

A. I do not recollect.

Cross-Q. 250. Did youa nd Baltzer not live on adjoining places on Staten Island; and if yea, how long did you so live before making the said iron contract?

A. We did, and for some months, but I really can't say for how long.

Cross-Q. 251. Before the making of said contract, were you acquainted with the firm of Schepler & Co., or any member thereof?

A. A very short time before, if at all.

Cross-Q. 252. At and shortly before the making of said contract, where was your place of business, and where was the place of business of Baltzer & Taaks, and of Schepler & Co.?

(Objected to, as immaterial.)

A. My place of business was 58 Wall street, New York; Baltzer & Taaks were 50 and 52 Exchange Pl., and Schepler & Co. in the same building and on the same floor, but not in the same offices with Baltzer & Taaks.

Cross-Q. 253. What was the distance between your place of business and the place of business of Baltzer & Taaks and Schepler & Co.?

(Objected to, as irrelevant and immaterial.)

A. I would say about two blocks.

Cross-Q. 254. At and shortly before the making of said iron contract, had you any commercial standing in the city of New York? Were you rated upon the books of commercial agencies; if yea, what was your standing and rating?

(Objected to, as irrelevant.)

A. I don't know whether I had any commercial standing; I do not know whether I was rated upon the books of commercial agencies.

217 Cross-Q. 255. At the time you made the said contract what was your estimate of your worth?

(Objected to, as irrelevant and immaterial.)

A. I was worth $100,000 at least.

Cross-Q. 256. At the time of making said contract what was the reputed wealth of Greenleaf, Norris & Co., and what of Charles Gould?

(Objected to, as before.)

A. Both were regarded as very wealthy houses, and perfectly responsible for any contracts they would make; I was *was* told that Greenleaf, Norris & Co. represented a million of money when I made my inquiries about them.

Cross-Q. 257. When you made the proposition to build the Chatham railroad on behalf of yourself and your associates, to wit, Greenleaf, Norris & Co. and Charles Gould, did you have authority to represent said firms in that matter, or did you not?

A. I never made any such proposition.

(Counsel for complainant now states and insists that, if the proposition referred to in the preceding question was in writing, that the same be shown to the witness, and that he be examined from the writing and not verbally from the writing, without producing it.)

Cross-Q. 258. I hand you here, marked "Defendants' Exhibit P., Letter A," dated "New York, Sept. 1st, 1868," and filed a copy thereof, addressed "To the president of the Chatham Railroad Co., Wm. J. Hawkins, Esq.," and commencing: "Sir: On behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Charles Gould, Esq., I propose as follows," and signed "John F. Pickerell, for self and associates:" I ask you if this entire instrument body, as well as signature, is not in your handwriting, and if the same was not, by you or by your authority, submitted to the said Chatham Railroad Company?

218 A. It is wholly in my handwriting and was by me submitted in person, or by mail, to the Chatham Railroad Company.

Cross-Q. 259. When you made the contracts to build the Chatham railroad, or any portion thereof, such as is set forth in exhibits offered by complainants in this your deposition, did you do the same in good faith, or, if not, how otherwise?

(Defendants' counsel objects to the question, because it assumes what has not been disclosed by the cross-examination, inasmuch as the proposition put in evidence P. A. proposes not to build any railroad, but "to contract to do so," and that do such contract as therein proposed has been produced to the witness, and objects to his testifying as to such contract until it is produced.)

A. Undoubtedly I proposed to do in good faith what I did propose to do.

Cross-Q. 260. In your redirect examination in this behalf in questions 208 and 209 and your answers thereto I ask you whether the contract therein referred to was made by yourself to cover a fraud, or for the *bona fide* purpose of ratifying and confirming what had been previously done?

(Question objected to, as it does not ask the witness to state any matter of fact within his knowledge, but asks him to state conclusions and motives of himself and others, which are not legitimate questions or such as a witness can answer by the statement of any facts.)

A. For the purpose stated, of ratifying and confirming what was done.

Cross-Q. 261. Mr. Pickrell, without going into particulars, I ask you this question: In all of your transactions and dealings with the Chatham Railroad Company, or with any person touching its business, or affairs, in any matter whatsoever you were ever a party to, or cognizant of, any fraud or fraudulent dealing?

(Objected to, as stating or implying no matter of fact whatsoever, but simply asks the witness for a general conclusion upon
219 general assumption of facts, the answer to which cannot be given by the statement of a fact, but calls upon the witness to state whether he was or was not, cognizant of, or a party to, a fraud or fraudulent acts, which is a matter of conclusion or law by the court, and not upon facts stated and proved, and not a matter of conclusion for the witness.)

The complainants' counsel further objects to the substance of the question, as it sets forth and states no specified acts done by the Chatham Railroad Company, or its officials, upon which he could found any opinion whether the said acts were fraudulent or not, even if it were competent to do so if facts were stated.)

A. None whatever.

Cross-Q. 262. With regard to the iron contract, which is the subject of this litigation, did not Messrs. Baltzer & Taaks and Schepler & Co. enter into the same after full investigation?

A. Certainly; most ample.

Cross-Q. 263. Did not Baltzer & Taaks and Schepler & Co. have the amplest opportunity offered to them to ascertain the exact character and condition, as to solvency and otherwise, of yourself, before entering into said iron contract?

A. Certainly so.

Cross-Q. 264. Did not Baltzer & Taaks and Schepler & Co know, by their own investigation, the exact character and standing of the North Carolina bonds mentioned in said iron contract before said contract was concluded?

A. I am not sure that the bonds were issued previous to the signing of the contract.

Cross-Q. 265. Before any iron was delivered under said iron contract

did not Messrs. Baltzer & Taaks and Schepler & Co. have the fullest opportunities to inform themselves with regard to everything that concerned the North Carolina bonds mentioned in said contract?

(Complainant objects to the present and foregoing questions for the reason that he asks the witness to state no facts whatever that
220 can advise the court the means of information or investigation offered to complainants of the manner in which they investigated, or any facts or information brought to their knowledge.)

A. Certainly, sir.

Cross-Q. 266. Before the signing of said iron contract did not Baltzer & Taaks and Schepler & Co. well know that the Chatham Railroad Company had no available means except those to be derived from the sale of the North Carolina bonds and others of like character mentioned in said iron contract?

(Question objected to, for the reason that it states no facts as a means of imparting a knowledge assumed by the question upon which the witness can state the opinion asked for, even were it legitimate or competent to call for his opinion.)

A. I certainly knew so; and in every step of my negotiation I took very good care that Baltzer & Taaks and Schepeler & Co. should know whatever I knew.

Cross-Q. 267. Were Baltzer & Taaks and Schepeler & Co., at the time of signing said contract, babies, or were they regarded as prudent men, who knew how to look after their interests and take care of their own affairs?

(Question objected to, as simply asking for the opinion of the witness as to the character of the complainants.)

A. Baltzer was regarded with very great respect, so far as his ability as a business man was concerned, by all whom I inquired—and I did inquire from all I knew—and I have found him very far from being a baby; my dealings were almost wholly with Mr. Baltzer.

Cross-Q. 268. In all the contracts, papers, and negotiations executed or passing between yourself and any other person whatsoever with regard to the iron contract, or with regard to any other matter of business of the Chatham Railroad Company, or any officer thereof, did you understand what you were doing, or were you simply twisted around the fingers of those sharp Carolinians, Dr. Hawkins and John D. Whitford?

221 (Question objected to, as simply calling for the opinion of the witness of the character of the officers of the Chatham Railroad Company, and especially John D. Whitford and W. J. Hawkins, which is irrelevent and incompetent.)

A. My whole business with Dr. Hawkins and Col. Whitford was deliberately done—nothing whatever was hurried and certainly everything in all my transactions with these gentlemen was entirely plain and satisfactory to me before being entered into.

(Answer objected to, as stating and disclosing no fact material to this cause upon which the court can found any opinion.)

Cross-Q. 269. Mr. Pickrel, you were a party to all the transactions with regard to the furnishing of iron by Baltzer & Taaks, and Schepeler & Co., which was laid upon the Chatham Railroad, and you have had ten years to think about the same, and you have been fully examined in reference thereto; I now ask you, in closing this my cross-examination of you, to say whether or not the said iron contract, and everything done about the purchase and delivery of iron by Baltzer & Taaks, and Schepeler & Co., about said iron was not in all respects regular, and a straight, fair business transaction?

(Question objected to, as simply calling for the opinion of the witness, without either stating or implying any matter of fact whatever, or stating the acts done and performed upon which he asked to pass his opinion.)

A. Undoubtedly they were, and pleasant business transactions to me.

JOHN F. PICKRELL.

Subscribed and sworn to before me, this 12th September, 1879.

R. E. STILLWELL,
Examiner, &c.

222 EXHIBIT P., No. 35.—R. E. S., *Examiner.*

TREDEGAR IRON WORKS,
RICHMOND, ——— ——, 18—.

John F. Pickrell & Co., in account with the Tredegar Company.

1870.			
May 21.	150 kegs spikes, 22,500 lbs., @ 4¼c...	$956 25	
	239 bdls. 2,390–7" chairs, @ 40c. ea..	956 00	
			$1,912 25
June 18.	850 kegs spikes, 127,500 lbs., @ 4¼c..	$5,418 75	
	517 bdls. 5,170–7" chairs, @ 40c. ea..	2,068 00	
			7,486 75
June 21.	475 bdls. 4,750–7" chairs, @ 40c. ea.....		1,900 00
June 23.	216 bdls. 2,160–7" chairs, @ 40c. ea.....		864 00

223 DEFENDANTS' EXHIBIT P.—R. E. S., *Ex'r.*

NEW YORK, *September* 1, 1868.

To the president of the Chatham R. R. Co., Wm. J. Hawkins, Esq.

SIR: On behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Charles Gould, Esq., I propose as follows:

1st. To contract to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all the materials for same at your engineer's estimates, provided they are not less than is allowed for similar work on the Western North Carolina road.

2nd. The above is based upon my having the contract to supply

your road with all iron required, also locomotives, spikes, chairs, and equipments generally, at prices to be agreed on between us, so soon as the condition of your company will permit the making of such contract.

3d. In accordance with our various conversations whilst you were here, I further agree and propose to accept your State bonds, at prices to be fixed by us, for all supplies contained in proposition second; and, further, to loan and supply you with all the money you shall require from time to time for the purposes of your operations in building and equipping your road.

Signed in duplicate.

(Signed) JOHN F. PICKRELL,
For Self and Associates.

224 OSCAR B. SMITH, called as a witness on the part of the complainant, deposes and says:

Q. 1. Please state your name, residence, and occupation.

A. Oscar B. Smith; residence, 24 West Thirty-first street, New York; occupation, stock and bond broker, and am a member of the firm of Pomeroy, Cox & Smith.

Q. 2. What was your engagement, and with whom if any one, during the years 1868 and 1869?

A. I was cashier for Greenleaf, Norris & Co.

Q. 3. As connected with such firm, did you or did you not become acquainted with John F. Pickrell and John D. Whitford?

A. I did.

Q. 4. Please state in what manner you became acquainted with said parties, and in what capacity they were acting.

A. I became acquainted with them in connection with the Chatham Railroad Company. They were selling the bonds of the Chatham Railroad Company.

Q. 5. Now, please look at the book I now show you, marked on the outside, Tuesday, Thursday, Saturday, blotter; on the back, Blotter, G., N. & Co., and state, if you know, what said book is, to whom it belonged, or was used, if any one, and at what time.

A. It is a blotter. It belonged to the firm of Greenleaf, Norris & Co., and was used from May 1868, to May, 1869.

(Question and answer objected to.)

Q. 6. Please look at the item in said book: "Rec'd from J. F. Pickrell 500,000 N. Carolina 6 new, for acct. J. F. Pickrell, No. 626 to 1125, inc., $1,000 each;" and the further charge on the same page, "J. D. Whitford, agt., p'd his check on us, 800,000;" and, again, on the same page, "J. D. Whitford, agt., dft., favor of J. D. Whitford, J. D. Whitford, agt., $307;" and on the opposite page, "Delivered J. D. Whitford, per order of J. F. P., 500,000 N. Carolina bds., for acct. J. P. Pickrell, high numbers," and state in whose handwriting, if
225 you know, said entries are made, and whether or not the same refer to said John F. Pickrell and John D. Whitford, before spoken of.

(Objected to.)

A. Some of the writing is in the hand of Cornelius Ward and some in my handwriting.

(Objected to.)

Q. 7. Will you please state whether or not the said entries and charges, either are debits and credits in said book, for or against the said John D. Whitford and John F. Pickrell, either individually or as agents, are such as were made in the due course of business between the said parties and the firm of Greenleaf, Norris & Co.?

A. Yes, sir; they were. There is a blotter missing which would cover all transactions, being alternate days from the blotter before mentioned.

The complainants' counsel gives notice that he will tender the book and all and several the charges therein touching the transactions of John D. Whitford and John F. Pickrell, as agents or otherwise, in their dealings in the bonds of the State of North Carolina for or on account of the Chatham Railroad Company or otherwise.

Defendants' counsel gives notice of objections to the introduction of the book for the purpose indicated.

Q. 8. You have stated that you were in the employ of Greenleaf, Norris & Co. in the year 1868; will you please state how long you had been in their employ, and to what extent you were familiar with their business?

A. I was in the employ of Greenleaf, Norris & Co. from the time the firm began, about the year 1866, until the dissolution of the firm by the death of Mr. Greenleaf and Mr. Norris, which was in February, 1878, and was familiar with all the business of the firm.

Q. 9. During the year 1868, or at any other time, did, or did not, within your knowledge or information, the said Greenleaf,
226 Norris & Co. enter into a copartnership or any formal association with said John F. Pickrell for the building and equipping, or in any manner constructing said Chatham railroad?

(Objected to.)

A. Not to my knowledge.

Q. 10. Was or was not your personal knowledge of the business transactions of said firm such as would have enabled you to have known and to become advised of any such engagement or copartnership on their part that would have involved the expenditure of any considerable sum of money or heavy liability as such partnership with said John F. Pickrell would have involved?

A. Yes, sir.

Cross-examination by Mr. BATCHELLOR:

Cross-Q. 11. Might there not have been some transaction or communication between the said Greenleaf, Norris & Co., or some member of the firm and the said John F. Pickrell in reference to the Chatham Railroad Company, of which you were not informed?

A. I do not think there could have been any transactions where any large sum of money was involved without coming to my knowledge.

Cross-Q. 12. Do you intend to say that there was no such transaction between the said parties, or only that no such transaction came to your knowledge?

(Objected to, because the witness has stated that he only spoke of such matters as came within the scope of his knowledge and the character and extent of that knowledge as called for in his direct examination.)

A. I do not say positively that no such transactions occurred.

Cross-Q. 13. Have you no knowledge of any statement or communication in writing from the said firm of Greenleaf, Norris & Co., or the said firm, together with Charles Gould, to said Pickrell, some time in the latter part of 1868, about September?

227 (Objected to, unless the written communication inquired about be shown to the witness before giving his answer.)

Defendants' counsel states that the contents of such paper, if any there be, are not called for. The question is asked to test the knowledge and memory of the witness.

A. No, sir; I have no knowledge.

OSCAR B. SMITH.

Subscribed and sworn to before me, this 13th September, 1879.

R. E. STILLWELL,
Examiner, Etc.

MILTON S. LITTLEFIELD, called as a witness on the part of the complainants, being duly sworn, deposes and says:

Q. 1. Please state your name, residence, and occupation.

A. My name is Milton S. Littlefield; my residence, Jacksonville, Florida; occupation, president of a railroad company.

Q. 2. Do you or not know a corporation situated in the State of North Carolina called the Chatham Railroad Company?

A. I used to know such a corporation about ten years ago.

Q. 3. Do you not know one William J. Hawkins and one John F. Pickrell, in any manner connected with the said company?

A. I did know William J. Hawkins and John F. Pickrell; I understood that Hawkins was some way connected with the Chatham Railway Company; just how, I cannot tell; nor can I tell whether Mr. Pickrell had any connection with the company or not.

Q. 4. Did or did not the State of North Carolina, to your knowledge, during the year 1868, issue any bonds to said Chatham Railway Company, to be used in the construction of its road?

A. I believe they issued some bonds to the Chatham Railroad Company.

228 Q. 5. Did you or did you not receive any of said bonds? And, if yea, state how many, and from whom, and when?

(Question objected to.)

A. To the best of my recollection, I had some of those bonds, which I purchased from J. M. Heck; I cannot tell just how many

without my books and papers with me, which are now in Florida; I have no recollection of receiving any of the bonds of the State of North Carolina issued to the Chatham Railroad Company from any one else.

Q. 6. Did you or not receive as many as one hundred of said bonds at a par value of one thousand dollars each from W. J. Hawkins, president of the Chatham Railroad Company?

A. In the language in which the question is put I did not receive any of said bonds from any person; the bonds that I did have I received by purchase from Mr. Heck, and, to the best of my recollection, I received no bonds from Wm. J. Hawkins; my recollection is, though I may be mistaken, as it is a long time since this matter has been upon my mind, that William J. Hawkins was not president of the Chatham road; a man by the name of Cox was president of the road, to the best of my recollection, at the time referred to.

Q. 7. You state, then, that you never purchased or otherwise received any of said bonds from said Hawkins, either as president of the Chatham Railroad Company or otherwise?

A. I have no recollection of having any transactions in relation to said bonds with the said Hawkins, though I may be mistaken.

Q. 8. What did you pay said Heck for said bonds, and in what manner did you pay him?

(Question objected to.)

A. It is impossible for me, without having some memorandum or papers or books, to testify as to that transaction.

Q. 9. Please to look at the paper now shown you, which reads in words and figures, and is addressed and signed as follows:

229 $60,000. WASHINGTON, *February* 23, 1869.

Pay to the order of John F. Pickrell sixty thousand dollars, value received, and charge same as advised to ac.

M. S. LITTLEFIELD.

To CHAS. GOULD, Esq., 58 Wall St., New York.

the same being marked Exhibit P., 33, to the deposition of John F. Pickrell, and state in whose handwriting the body of said paper is, and whose signature is that at the bottom?

(Objected to.)

A. I should say the body of that is in the writing of John F. Pickrell; the signature is that of my own.

Q. 10. Now, please be so good as to state what connection, if any, said $60,000 draft has with the bonds of the State of North Carolina issued to the Chatham railroad, which you received from said Heck or any one else, if any?

(Objected to.)

A. I really cannot tell about that date; I was in Washington city and I received a telegram to meet Mr. Pickrell upon the arrival of the train, I think, from the South; I met him there; he presented

that paper, and, I think, a statement of an account and a receipt to me, though I will not be positive as to what papers he did present; and he said in substance that he wanted these in order to settle some of the account that he had with the Chatham Railroad Company; that he had a contract to build the road, and he wanted to fix matters up in some particular way, and I gave the draft; the subject-matter referred to took place almost a year before that date; there was very little said about it at the time, and I did not charge my my mind with what took place to testify with any degree of accuracy about it now; my impression now is that the draft was only wanted to settle up or balance some old account; there was two issues of bonds to the Chatham Railroad Company, and this transaction referred to the first issue, if I remember rightly.

230 Q. 11. Did you personally know Charles Gould, and had you at the date of said draft an account with him to the amount of $60,000, or any other amount?

A. I do not call to mind now whether I knew Charles Gould or not; it is utterly impossible for me to tell now; there was a banking house on New street where I had a large balance of money on deposit, though it is utterly impossible for me to fix dates; my impression is, this man Gould was connected with one of those banking houses, though I do not know.

Q. 12. The draft for $60,000, dated Washington, February 23, 1869, is addressed to Charles Gould, Esq., individually, 58 Wall street, New York; the question I ask you is, had you or had you not a credit by means of money or otherwise, to the amount of said sum, $60,000, upon which you drew said draft with said Gould individually?

A. As I said before, I do not call to mind so I can identify the man Mr. Gould; my impression is, and this I state to the best of my recollection, that he was connected with a banking house on New street where I kept a large account; further than this I cannot say.

Q. 13. What was the name of the house in New street in which you kept that account?

A. Hoyt & Gardner.

Q. 14. Did you or did you not ever pay to John F. Pickrell, or anybody for him, the said sum of $60,000 described in said draft?

(Objected to.)

A. I have no recollection of hearing the matter of that draft, of its payment or non-payment, ever brought to my attention by John F. Pickrell, or any one for him; certainly I never have seen it nce signing it; I don't wish to be understood as evading any answer or withholding any answer in relation to this draft, or any information that I may possess; it was a transaction closed at that time, and, so far as I can remember, never has been called to my attention since.

231 Q. 15. You have spoken of a receipt given you by Pickrell at the time you gave said draft; have you said receipt in your possession, and will you produce the same as part of your answer?

A. I cannot tell whether I have the receipt in my possession or not; if I have I will produce it; my impression is that I parted with the receipt some time since.

Q. 16. Not having said receipt in your possession so as to produce the same, you will please state the contents of said receipt so signed by said Pickrell, and for the payment of what it was intended to be a receipt; or was it for the same $60,000 draft when signed by you, to the best of your recollection and belief?

(Objected to.)

A. I certainly cannot state the contents of the receipt, as there has been no circumstance that has called the matter to my attention; hence I did not charge my mind with it; some time within the last year or year and a half Mr. Fenwick called my attention to the receipt, and I think that I gave it to him, though I will not be positive; with that exception I do not remember of seeing the receipt since it was given.

Q. 17. Except the $60,000 draft given said Pickrell, did you or did you not ever have any other dealing with him; if yea, state what they were.

A. I never had any other dealings to my recollection.

Q. 18. Then, was or was not said receipt given you by said Pickrell to cover said $60,000 draft?

A. I suppose I must have referred to that transaction.

And being cross-examined:

Cross-Q. 19. In your examination-in-chief you say that Mr. Pickrell spoke of a contract with the Chatham railroad; did he not say in that conversation that he had made a contract with the Chatham Railroad Company to build and equip its road?

(Question objected to, as calling for matter not within the scope of the direct examination, and calling for a hearsay statement.)

232 A. Well, I could not say positively what was said by Mr. Pickrell; my impression is that he said he had a contract for building two or three roads in North Carolina, and the Chatham was one of them.

M. S. LITTLEFIELD.

Subscribed and sworn to before me, this 13th September, 1879.

R. E. STILWELL, *Examiner.*

Further examination adjourned, subject to agreement between counsel for complainant and defendants.

TUESDAY, *October 21st*, 1879—at 10.30 a. m.

Met pursuant to adjournment and agreement of counsel.

Present: Joseph B. Stewart, Esq., counsel for complainant; Thomas C. Fuller, Esq., counsel for defendant.

BENSON VAN VLIET, a witness for the complainant, being sworn, testified as follows:

Q. 1. Please state your name, residence, and occupation.

A. Benson Van Vliet; age, forty-two; residence, Poughkeepsie, New York; am general superintendent of Vassar College.

Q. 2. Where did you reside in the years 1868 and 1869, and in what business, if any, were you engaged?

A. I resided at Tennefly, New Jersey, and was engaged in the stock and banking business at 66 Exchange Place, New York, and was a member of the firm of Greenleaf, Norris & Company.

Q. 3. During your connection as a member of the firm of Greenleaf, Norris & Co., did you or did you not become acquainted with the defendants, John F. Pickrell, John D. Whitford, William J. Hawkins, and the Chatham Railroad Company, as a body corporate, or either of them; and, if yea, please state, to the best of your recollection, when and under what circumstances your acquaintance with or knowledge of said parties originated?

233 A. I became acquainted with Pickrell, Whitford, and I think Hawkins, and understood they were acting for the Chatham Railroad Company; the first two were frequently in our office opening negotiations for the sale of the Chatham railroad bonds, many of which were sold, as will appear from the books.

Q. 4. Will you please look at the book now shown you, entitled on the outside "Blotter, G., N. & Co.," in gilt letters, and in writing pasted on the back, "From April 28th, 1868, to June 12th, 1869, Tuesday," and also in gilt letters on the cover, "Tuesday, Thursday, Saturday," and state whether or not you have any knowledge of said book; and, if yea, please state what said book is, and how you derived your knowledge of the same.

A. I know the book; it is our blotter of every other day transactions; I know it by the handwriting of the clerks and our firm name on the back.

Q. 5. Will you now please look at said book and the entries therein under date of Thursday, December 3d, 1868, at the entry in the following words: "Rec'd from J. F. Pickrell $500,000 N. Carolina 6, new, for J. F. Pickrell, $1,000 each;" and also on the same page, "J. D. Whitford, agt., p'd his check on us, $300,000;" and on the opposite page, "d'l'd J. D. Whitford, $500,000 No. Carolina b'ds for acc. J. F. Pickrell;" on the same line, "Lockwood & Co., $15,000 No. Carolina 6's, new, ret'd; do. $100,000 r't'd; do. $150,000 r't'd; Hoyt & Gardiner, $10,000. do. r't'd; do. $20,000, do. r't'd; Helgarten & Co., $50,000 do. r't'd; do. $33,000 r't'd," and state whether or not the bonds therein described and the money mentioned on said book have any reference or constitute any part of the dealings of said Whitford and Pickrell on the part of said Chatham Railroad Company to which you have referred; and, if yea, please state to the best of your recollection what said transactions mean?

A. I recognize these entries as part of the transactions referred to; we on that day received from Pickrell $500,000 North
234 Carolina 6's, new, numbered 626 to 1125, inclusive, and we delivered these bonds to Lockwood & Co., to Hoyt & Gardiner, and Halgarten & Co., from whom we had borrowed them; the

$300,000 cash was paid out as the entry states; the $500,000 North Carolina bonds entered as delivered to J. D. Whitford were high numbers, which, as I remember it, were not a good delivery at the board.

Q. 6. Please look again at said book, from the date of said entries up to and including January 5, 1869, and state if the handwriting is that of persons in the employ of Greenleaf, Norris & Co. at that time?

(Question objected to by defendants.)

A. I recognize all the entries as made by clerks in our office or by myself.

Q. 7. Were or were not the persons so employed authorized to make such entries, and was the same done in due course of business?

(Question objected to by defendants' counsel.)

A. They were.

Q. 8. The entries in said book appear to be Thursdays, Tuesdays, and Saturdays; was there or was there not any reasons for naming those particular days on said book; and, if yea, please state what it was.

A. This book contained the transactions of Tuesdays, Thursdays, and Saturdays of each week; we had another blotter for Mondays, Wednesdays, and Fridays, for the convenience of the clerks in writing up the books at night, one clerk writing up one book while another would be preparing the other for the next day's business.

Q. 9. Have you, or have you not, in your possession the concurrent and corresponding book for Monday, Wednesday, and Friday; and, if yea, will you produce the same as part of your examination?

A. I have it not in my possession, and do not know where it is; I presume it is lost.

235 Q. 10. Did or did not said Greenleaf, Norris & Co., on or about the first day of September, 1868, or at any other time, enter into a copartnership or agreement with the defendant, John F. Pickrell, for constructing or building the said Chatham railroad, in connection with one Charles Gould or otherwise?

A. They did not.

Q. 11. Will you now please look at a paper in print, which I now show you, and described as P., No. 3, in the deposition given in this cause, given by John Pickrell, dated "New York, Sept. 1st, 1869. To the president of Chatham R. R. Co., William J. Hawkins, Esq. Sir: On behalf of myself and associates, viz., Mess. Greenleaf, Norris & Co. and Charles Gould, Esq., I propose as follows," and signed "John F. Pickrell, for self and associates," and state what knowledge, if any, you have of said paper, and whether the same was seen by you or your firm, and the use of your firm name authorized therein, as in any respect the associates or partners of said John F. Pickrell in the building of said Chatham railroad or any other business enterprise.

A. I know nothing about the paper; I never saw it, and I am

confident that the use of our name as being associates with Mr. Pickrell, or any of these parties, in any business transaction other than the selling for them of certain bonds and keeping an account with them of the proceeds of same, for a commission, in the regular course of our business was wholly unauthorized.

Cross-examined by T. C. FULLER, counsel for the defendants other than John F. Pickrell:

Cross-Q. 1. In July, 1868, and up to 1871, who composed the firm of Greenleaf, Norris & Co.?

A. Augustus W. Greenleaf, John B. Norris, and Benson Van Vliet. There had been previous to that a short time a person by the name of Hazen in the firm.

Cross-Q. 2. When did the firm name of Greenleaf, Norris & Co. commence, and how long did it continue?

A. In 1865 or 1866 it commenced, and ended about a year ago by the death of both Mr. Greenleaf and Mr. Norris.

236 Cross-Q. 3. During the year 1868 what was the commercial standing and pecuniary worth of Greenleaf, Norris & Co.?

(Question objected to, as immaterial.)

A. They stood well, and were known to have ample means—say, $150,000.

Cross-Q. 4. During the year 1868 did you know one Charles Gould; if yea, what was his commercial standing, in what business was he engaged, and what was his reputed pecuniary worth?

(Question objected to, as immaterial and irrelevant.)

A. I knew Charles Gould; do not think he was at that date engaged in active business. He was thought to be worth about $50,000, as near as I can get at it. He is dead. I do not know when he died.

Cross-Q. 5. Do you know the plaintiffs, Baltzer & Taaks, or either of them; if yea, how long have you known them?

A. I know Mr. Baltzer, and have known there was such a house. I have known Mr. Baltzer since 1865, but only casually.

Cross-Q. 6. How long have you known John F. Pickrell?

A. My acquaintance commenced with him at the time of these transactions spoken of before, about October, 1868.

Cross-Q. 7. Did you know him as having business transactions with the house of Greenleaf, Norris & Co., about the building of the Chatham railroad, as early as July, 1868?

A. No, sir.

Cross-Q. 8. Did you not know him, John F. Pickrell, as early as July, 1868?

A. I think likely; possibly I did.

Cross-Q. 9. Did you not know John D. Whitford as early as July, 1868?

A. About the time of my first acquaintance with Mr. Pickrell I became acquainted with Mr. Whitford. I associate the two together.

Cross-Q. 10. Refresh your recollection and say, if you please, the

earliest date of which you have any knowledge of any trans-
237 action with reference to the Chatham railroad, or any of its affairs, between Greenleaf, Norris & Co., as one party, and John D. Whitford and John F. Pickrell, or either of them, as the other party.

A. I have nothing to refresh my recollection with but the blotter, which contains the transactions of only every other day, and I find nothing entered there previous to October, 1868.

Cross-Q. 11. Are you acquainted with the handwriting of each member of the firm of Greenleaf, Norris & Co. during the year 1868?

A. I am.

Cross-Q. 12. Are you acquainted with the handwriting or signature of Charles Gould, so as to be able to recognize the same if it were shown you?

(Question objected to, for the reason that the assumed writing should be shown to the witness before he is questioned as to it.)

A. I have not seen it for years; think I could recognize it if it was shown me.

Cross-Q. 13. Look upon the paper now shown you, a copy of which, marked V. V., No. 1, hereto annexed and made part of this question, and say whose signature thereto appear.

A. The Greenleaf, Norris & Co. signature is that of Mr. Augustus Greenleaf, a member of the firm; my impression is that Charles Gould's signature is genuine.

Cross-Q. 14. Please look upon the paper now shown you, and marked V. V., No. 2, a copy of which is hereto annexed and made a part of this question, and say whose genuine signature appears thereto.

(Complainants counsel' calls upon the defendants' counsel to state for whom or in behalf of what defendant or defendants the V. V., No. 2, is offered in evidence, and whether in behalf of all and several of the defendants represented by the counsel, so that complainants' counsel may conduct his redirect examination accordingly.)

(DEFENDANTS' COUNSEL: "I offer this for each and every of the defendants represented by Fuller & Batchellor.")

238 A. I think Charles Gould's genuine signature is here; as to the other I do not know.

Redirect examination by Mr. STEWART:

Redirect Q. 15. Will you now please look again at the communication "V. V., No. 1," referred to and made part of your cross-examination, and state if you know in whose handwriting the body of said communication is, to the best of your knowledge and belief?

A. Charles Gould's.

Redirect Q. 16. The said communication "V. V., No. 1," commences with these words: "Dear Sir: We have concluded to accept your proposition for building, &c., of the Chatham railroad," and addressed "Col. John D. Whitford, 60 Wall street, N. Y." Was any

proposition for building said Chatham railroad ever exhibited or submitted to your firm by said John D. Whitford for building said railroad on or previous to the 6th July, 1868, or at any other time; and, if yea, will you produce the same, or a copy thereof, as a part of your answer?

(Question objected to by defendant, because it does not ask for the witness' knowledge, but is so general that the witness cannot give an answer responsive to said question. The witness can only speak of such transactions of his firm as came within his personal knowledge, and cannot undertake to say what transactions were made by other members of the firm, unless they were brought to his personal knowledge.)

(Complainants' counsel states that the Exhibit V. V., No. 1, upon its face states that a proposition had been addressed by Whitford to the firm of Greenleaf, Norris & Co. for building the Chatham railroad, the assumed proposition not being itself produced to the witness; wherefore, in order to bring the whole facts before the witness, he is asked to state whether such was received within his knowledge; and, if so, to produce it.)

A. I never saw one, and don't believe there ever was any.

(Answer objected to.)

239 Redirect Q. 17. Please look again at said paper V. V. No. 1, and state whether or not any survey of any engineer, or any estimate for work done on said road, or for supplies therefor, either in grading, bridging, cross-ties, iron, rolling-stock, or machinery of any description ever was presented, submitted, or made known to the firm of Greenleaf, Norris & Co., for such labors and supplies on said Chatham railroad, or any portion thereof, within your knowledge, information or belief?

(Objected to.)

A. No, sir.

Redirect Q. 18. Another sentence in said communication V. V. No. 1, reads as follows: "The present low rates for money suggest prompt execution of the contract if it can be had on reasonable terms;" will you please state whether or not any contract for the building of said Chatham Railroad ever was presented by said John D. Whitford, or any one else, for the signature of the firm of Greenleaf, Norris & Co., and Charles Gould thereto, within your knowledge, information, or belief?

(Question objected to.)

A. No, sir.

Redirect Q. 19. Another sentence in said communication V. V. No. 1, reads as follows: "Be pleased to keep us fully advised of your movements;" will you please state whether or not your firm ever received any letter, communication, or advice from John D. Whitford, in reference to any contract or any work being done thereon as expressed in said communication V. V. No. 1, or otherwise?

(Question objected to.)

A. I don't remember any; I don't believe he did.

(Answer objected to.)

(Complainants' counsel now asks the defendants if they have or pretend to have any contract or agreement, statement, letter, or communication in reference to the Chatham railroad, such as expressed in Exhibit V. V. No. 1, and, if they say they have, the com-
240 plainant calls upon them to produce the same for the inspection of the witness as a member of the firm of Greenleaf, Norris & Co., now under examination.)

(Defendants say, we do not recognize your right to make such call, and decline to respond thereto.)

Redirect Q. 20. Was there or was there not at any time an account credit or otherwise opened on the books of Greenleaf, Norris & Co., with the Chatham Railroad Co., for the building of its road pursuant to the Exhibit V. V. No. 1, or otherwise?

(Objected to.)

A. No, sir.

Redirect Q. 21. Could or could not such a contract and undertaking as the building said Chatham railroad have been entered into and conducted by said Greenleaf, Norris & Co. between July, 1868, and July, 1872, without the same being known to you as a member of said firm?

(Objected to.)

A. It could not.

Redirect Q. 22. Did or did not the said North Carolina Railroad bonds mentioned in your direct examination and mentioned in the book of Greenleaf, Norris & Co., made part thereof, cease to be marketable, and, if yea, please state when and for what cause, to the best of your knowledge and recollection?

(Objected to.)

A. They did, after we had sold and delivered quite a number by a decision of the New York Stock Exchange declaring them irregular and not a good delivery.

Redirect Q. 23. In the answer of John D. Whitford, filed in this cause, a printed copy of which is now shown you, occurs the following statement:

"On the said 3d day of December, 1868, the sum of $386,475.92 was transferred from the account of said Pickrell to John D.
241 Whitford, 'agent,' on the books of Greenleaf, Norris & Co." was or was not such transfer made according to the best of your knowledge and belief?

A. Yes, sir.

Redirect Q. 24. If Greenleaf, Norris & Co. had been the partners of John F. Pickrell for building the said Chatham railroad, and bound to receive their pay therefor in said North Carolina State bonds,

would they or would they not have transferred to and paid over to said Whitford as the agent of said company or otherwise the said $386,475.92, it being the fund in their hands for building said road after said North Carolina State bonds had been so repudiated and excluded from the stock board as unmarketable security?

(Objected to.)

A. They would not.

Redirect Q. 25. Will you now please look again at Defendants' Exhibit V. V. No. 2, purporting to be an agreement between Charles Gould and John F. Pickrell for the division of profits to be derived from an agreement between Whitford and Pickrell for the building of the Chatham railroad, dated July 8, 1868, and state whether or not your said firm ever within your knowledge ever saw or inspected said paper, or whether you, as a member of said firm, or otherwise, ever saw or read said paper previous to the same being exhibited to you by the defendants on this your examination?

A. No, sir.

Redirect Q. 26. Was not the rate of commission charged by brokers in the city of New York in the month of October, 1868, for the sale of bonds one-eighth of one per cent.?

A. It could not be less than one-eighth nor more than one-quarter.

Redirect Q. 27. Question repeated, and I ask if the rate for selling State bonds at the time mentioned was not one-eighth of one per cent.; please answer yes, or no?

(Question objected to.)

A. The rate was usually one-eighth of one per cent., but in many instances it was one-quarter.

242 Redirect Q. 28. State what caused the difference in the charges for selling bonds.

A. We charged a quarter when we could get it, sometimes we took unusual pains—otherwise an eighth.

Redirect Q. 29. Was not the rate fixed by the stock board at one-eighth of one per cent.?

A. I think the rule of the stock board was not less than one-eighth of one per cent., and not more than one-quarter.

BENSON VAN VLIET.

Sworn to before me, Oct. 21st, 1879.

R. E. STILWELL, *Examiner.*

243 V. V. No. 1.

NEW YORK, *July* 6, 1868.

DEAR SIR: We have concluded to accept your proposition for building, etc., of the Chatham railroad from Raleigh to the Gulf, which we understand to be an extension of the Raleigh & Gaston railroad, and shall hold ourselves prepared to furnish the money for building the road as fast as necessary. The present low rates of money suggest prompt execution of the contract, if it can be had on

reasonable terms, and the work should be rapidly pushed. Be pleased to keep us fully advised of your movements.

Very respectfully, CHAS. GOULD, 58 *Wall St.*

GREENLEAF, NORRIS & CO.,
66 *Exchange Place.*

Col. JOHN D. WHITFORD,
Wall Street, New York.

244 V. V., No. 2.

Whereas it is agreed by and between John D. Whitford, of Newbern, North Carolina, and John E. Pickrell, of Staten Island, New York, as per agreement between them, dated July 8, 1868, that they will, under the firm name of John F. Pickrell, take the contract for building the Chatham railroad, understood to be an extension of the Raleigh & Gaston railroad in State of North Carolina:

Now this agreement, made this day by and between Charles Gould, of New York city, and the said John F. Pickrell;

Witnesseth, that for and in consideration of services already rendered to said Pickrell by said Gould, and to be hereafter rendered by him in this business, the said Pickrell agrees to pay to said Gould an amount which shall be found to be equal to the one-half of the net profits reserved to said Pickrell in the above-named business, it being understood that the profit of said Pickrell in said contract is to be the one-third of the net profit earned in building said road.

It is further understood and agreed that one-quarter of one per cent. on all securities received from said road shall be paid to the bankers Greenleaf, Norris & Co., through whom all of said securities shall be negotiated and sold.

Witness the signatures and seals of the said parties at New York, this eighth day of July, one thousand eight hundred and sixty-eight.

CHAS. GOULD. [L. S.]
JOHN F. PICKRELL. [L. S.]

Adjourned to October 22d at 11 a. m.

245 WEDNESDAY, *October 22d*, 1879.

Present: Counsel as before.

HERMAN R. BALTZER, called as a witness on the part of the complainants, and duly sworn, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. Herman R. Baltzer; reside on Staten Island; age, fifty-four years; and am a banker.

Q. 2. Are you or are you not one of the parties complainant to this suit?

A. I am one of the parties complainant in this suit.

Q. 3. Are you or are you not acquainted with the parties defendant, William J. Hawkins, John D. Whitford, John F. Pickrell, and the Chatham Railroad Company, as a body corporate, or either of them; and if yea, state when and how you made their acquaintance?

A. I am acquainted with William J. Hawkins, John D. Whitford,

John F. Pickrell, and the Chatham Railroad Company, as a corporation; in the beginning of September, 1868, Mr. Schepler, of the firm of Schepler & Co., told me that he was negotiating with John F. Pickrell and John D. Whitford, for the Chatham Railroad Company, North Carolina, for the sale of about 10,000 tons of railroad iron, and this iron they expected would be paid for out of the proceeds of North Carolina State bonds, which the State was to issue in exchange for the first mortgage bonds of the railway; his firm not having sufficient means for such a transaction, and not being familiar with bond negotiations, he asked Baltzer & Taaks whether we would join them, Schepler & Co., in the business, and as we expressed our willingness to do so, he afterwards introduced to us John F. Pickrell and John D. Whitford.

Q. 4. When so introduced to John F. Pickrell and John D. Whitford, in reference to the sale and purchase of said 10,000 tons of iron for said Chatham Railroad Company, please state what they, or either of them, if anything, said to your firm about the capacity in which they were acting, and for whom said iron was to be
246 purchased, and by whom received and handled previous to the making of any written agreement, provided you shall testify that any written agreement was made.

(Objected to.)

A. They said that they were acting for the Chatham Railroad Company, John D. Whitford especially designated as the agent for the company, and John F. Pickrell was to attend to the business; the conditions of the contract were discussed, and after a general verbal agreement as to them, we told them to resort to our lawyer to draw a written agreement, which was done.

So much of the above answer as states conversations or parts of conversations between the witness and Whitford, one or both, objected to.

Counsel for the complainants states that the question asked was to lay the foundation for introducing the written agreement between the parties, and that the conversation between Whitford and Pickrell is intended to be connested with Hawkins personally, and as present and brought home to the company in due course of the examination of the witness.

Q. 5. Please look at the paper now shown you, the first paragraph of which reads as follows: "This agreement, made this —— day of ——, 1868, by and between Messieurs Shepler & Co. and Messieurs Baltzer & Taaks, of the city of New York, parties of the first part, and John F. Pickrell and John D. Whitford, both also of the city of New York, parties of the second part, witnesseth, &c.," being the same as Exhibit P., No. 5, in deposition of John F. Pickrell in this cause, and reciting thereafter articles numbered from I to XI, and without signatnre, and state whether or not you know said paper and the origin thereof, and if yea, state, to the best of your knowledge and recollection, for what purpose said paper was drafted and used, if for any purpose.

(Objection continued.)

247 A. This paper was the draft of the intended contract, and was the result of the interview had between us and John D. Whitford and John F. Pickrell, in the presence and in the office of our lawyer, and with his concurrence, and this paper the parties, meaning John D. Whitford and John F. Pickrell, took with them, declaring they had to send it to Mr. William J. Hawkins, president of the Chatham Railroad Company.

Q. 6. Was or was not said paper, Exhibit P, modified in any manner, and a written agreement signed and executed pursuant to such modification between the parties, and if yea, will you please then look at the paper now shown you, the first paragraph of which reads as follows: "This agreement made this eleventh day of September, one thousand eight hundred and sixty-eight, by and between Messieurs Schepeler & Company and Messieurs Baltzer & Taaks, of the city of New York, parties of the first part, and John F. Pickrell, also of the city of New York, party of the second part, witnesseth," being the same as marked Exhibit No. 6 in the deposition of John F. Pickrell in this cause, and state whether or not the same is the original contract as modified from the Paper P., No 5, and executed by the parties, and look at the signatures thereto and state whether they are the genuine signatures of the parties signing the same.

(Objected to.)

A. The paper marked P., No. 5, was returned to us variously modified; as, for instance, the name of John D. Whitford being dropped, and the name of William J. Hawkins being inserted in a few places, and finally also the United States Trust Company, as trustee for the deposit of bonds as security, being replaced by the Continental National Bank; it was then copied and executed, and the signatures I see attached to the contract, marked P., No. 6, being Exhibit A in the bill, I recognize as the identical signature of the parties.

Q. 7. At the time said contract, Exhibit A, in the bill was finally executed and signed, was there or was there not another and con-

248 current paper or agreement forming part of the same also executed by the Chatham Railroad Company; and, if you answer yea, then please produce the original, or a copy of the same, if you have it your possession.

(Objected to.)

A. There was such an agreement executed at the desire of William J. Hawkins, president of the Chatham Railroad Company, and signed by him, which was part of the other agreement; I have the original, but not with me; I suppose it is among the papers in this suit, but cannot produce it now.

Q. 8. Will you please look at the printed paper now shown you, marked as Exhibit B in the bill of complaint in this cause, and state whether or not, according to the best of your knowledge and recollection, the same is a correct copy of the said concurrent agreement so

executed on the part of said Chatham Railroad Company as stated in your preceding answer?

(Objected to.)

A. Yes; I recognize it to be a correct copy.

Q. 9. The said papers each bear date the 11th day of September, 1868; were or were not, to the best of your knowledge and recollection, said papers signed and delivered on that day; and, if not, then please state, as nigh as you can, at about what time they were signed and delivered.

A. I know they were not signed on the 21st of September, but I do not quite recollect the exact day when they were signed; it must have been sometime towards the end of September, and the second agreement was signed later than the first.

Q. 10. Will you please look at the paper now shown you, which reads as follows:

"OFFICE OF JOHN F. PICKRELL, NO. 60 WALL STREET,
"NEW YORK, *September* 21*st*, 1868.

"D'R SIR: Instead of 'U. S. Trust Co.' put Continental B'k as custodian of the bonds for iron contract.

"Y'rs, truly, JOHN F. PICKRELL.

"Messrs. BALTZER & TAAKS."

249 And state whether or not you know the handwriting of said paper; and, if yea, state who did write it, and whether same was received by you at or about its date, and what relation, if any, it had to the purchase and sale of said iron.

A. I recognize this note as written by John F. Pickrell himself, requesting us to have the name of the Continental National Bank inserted in the contract then agreed upon, as custodian for the bonds, instead of the United States Trust Company, previously named as such in the contract.

Q. 11. You have stated at what time and in what manner and for what business purpose your firm was brought in contact with Pickrell and Whitford; will you please state in what manner, for what purpose, at what stage of the negotiation for the purchase and sale of 10,000 tons of iron you were brought in contact with said William J. Hawkins, the president of said Chatham Railroad Company?

(Objected to.)

A. About a week after we were first made acquainted with Pickrell and Whitford, they introduced William J. Hawkins, president of the Chatham Railroad Company, to our acquaintance at our office; Mr. Hawkins confirmed to us that John D. Whitford was their agent, and would see that all went right; he further expatiated on the soundness of the North Carolina State bonds, and expressed himself pleased that we intended and expected to take a lively interest in the introduction of the bonds in foreign markets, and gave assurances of their interest always being promptly paid.

Q. 12. Besides the interview with the defendant Hawkins, presi-

dent of Chatham Railroad Company, stated in your preceding answer, did you or did you not have any other or further interview with him in reference to the sale and purchase of said iron; and, if yea, please state, to the best of your recollection, how often you so conversed with said Hawkins, and when and where.

A. I think he called at our office about three times, partly to discuss the second agreement, expressing his wishes with regard to it.

250 Q. 13. In these interviews, subsequent to the one first mentioned, in reference to the purchase of said iron, what, if anything, did said Hawkins say in reference to the action and position of said Whitford and Pickrell, or either of them, or did he in any manner qualify or vary from what he said in the first instance.

(Objected to.)

A. Before taking leave of us, at his last visit, Mr. Hawkins told me that I need not be under any apprehension, as he left Mr. Whitford in New York, who would see to everything.

Q. 14. After said agreement had been so executed and delivered, did or did not your firm deliver, or cause to be delivered, the said 10,000 tons of iron, or any part thereof?

A. We delivered a portion of the iron.

Q. 15. At or about what time did you make the first delivery of iron under said contract; to whom did you deliver it, and to what amount?

A. On the 12th of October, 1868, we made the first delivery; we delivered the document to John F. Pickrell; the amount was about 630 tons.

Q. 16. Was said delivery of iron on the 12th of October paid for; and, if yea, please state in what manner and by whom.

A. It was paid for in cash by a check from Greenleaf, Norris & Co.

Q. 17. Were there or were there not any further deliveries of iron made by your firm under said contract; and, if yea, state the date thereof.

A. On the 2d of November, 1868, we were ready to make three more deliveries of iron, and about the 11th of November we received an order for 250 bonds on the Continental Bank.

Q. 18. Will you now please look at the printed paper now shown you, marked Exhibit P., No. 8, to the deposition of John F. Pickrell in this cause, and state whether or not said paper correctly states the several deliveries of iron of which you have spoken, as to dates, quantity, and amount to be paid therefor?

251 A. I have examined said exhibit, and I think they do state it correctly.

Q. 19. Will you now be so good as to state what payments, if any, were made on said second, third, and fourth deliveries of iron, and in what manner, by whom, and the amount thereof?

A. We delivered the documents against check for $75,000, Greenleaf, Norris & Co., and took for the balance $100,000 bonds of North Carolina on the 19th of November, and $50,000 bonds on the 21st of November, 1868.

Q. 20. Did you or did you not receive $150,000 bonds for any special purpose or use under said contract, or for any special disposition of the same; and, if yea, please state what it was.

(Objection by defendants.)

A. We expected to send these bonds to Europe.

(Objection to answer.)

Q. 21. Was it or was it not undersood between your firm and the said Chatham R. R. Company, through its president, said Hawkins, that one of the main inducements your firm had in undertaking the delivery of said iron was to place said bonds in a foreign market, and was it not the desire and wish of said company that it should be done?

(Objected to.)

A. Yes, sir; that was understood and desired.

Q. 22. Had or had not your firm, pursuant thereto, made arrangements for the disposing of a portion of said bonds previous to receiving them?

(Objected to.)

A. Yes, sir; we had.

Q. 23. Did you or did you not send said bonds to Europe, according to your intention; and, if not, please state what, if anything, prevented you from doing so.

(Objected to.)

252 A. We did not send any to Europe; a short time after we received them, the New York Stock Exchange declared them to be not a good delivery, owing to attacks upon their validity in the State of North Carolina, which finally culminated in their being declared unconstitutional by the courts of that State.

(Answer objected to.)

Q. 24. What effect, if any, did excluding of said North Carolina State bonds have upon their standing or use in the money market, either as security or investment?

(Objected to.)

A. It suspended their current value in the market.

Q. 25. Please state about how many days after you received said bonds, and delivered said iron, before the same were so declared to be of no value or avilable in the money market.

(Objected to.)

A. In the beginning of the month of December, 1868; about twelve or thirteen days after we received them.

Q. 26. Upon being advised that you could not use or deliver said bonds so delivered to you for said iron, did you or did you not notify said Pickrell and Whitford thereof, and require payment for said iron?

(Objected to.)

A. Certainly we did.

Q. 27. What, if anything, did they or either of them say or reply to your firm in reference to the payment of said iron so delivered as stated in your preceding answer?

(Objected to.)

A. Whitford and Pickrell told us that the bonds would undoubtedly be made good, and that if not we would receive the money instead.

(Objection to answer.)

253 Q. 28. Were or were not these assurances continued that you should receive pay for said iron instead of said bonds for any considerable length of time; and, if yea, please state by whom said assurances were given, and for about what length of time.

A. These assurances, in different ways, were given by Whitford, Pickrell, and Hawkins for nearly four years succeeding.

(Answer objected to.)

Q. 29. For whom did said Pickrell or Whitford, or either of them, claim to speak and act in reference to paying you for said iron during the period referred to?

(Objected to.)

A. For the Chatham Railroad Company.

Q. 30. Please look at the paper now shown you, purporting to be a copy of a telegram dated Raleigh, N. C., February 24, 1869, and addressed to Col. John D. Whitford, and signed Wm. J. Hawkins, a copy of which is made part of this question, marked B. & T., No. 1, and state whether or not, according to your best recollection, it is one among the communications shown to you by said Whitford, assuring you that you should be paid for said iron.

(Objected to.)

A. That telegram was handed to us by Whitford, and used as a strong argument that everything would be settled faithfully with us.

(Objected to.)

Q. 31. Beside the assurances so given you by said Whitford and Pickrell during said period of four years that said iron should be paid for, did you or not have any conversation with or receive any assurances from said Wm. J. Hawkins, the president of the Chatham railroad, either verbal or written, that said iron should be paid for; and, if yea, please state, to the best of your recollection, when and in what manner said assurances were given.

(Objected to.)

254 A. I think it was in the fall of 1869 when I was invited to visit North Carolina and see the progress of the road, with a view of negotiating a loan of first mortgage bonds, which it was pro-

posed by the Chatham Railroad Company to issue, and I was assured by Mr. Hawkins, the president, who exhibited one of the bonds to me and asked my opinion regarding them, that when that negotiation would be made this unsettled amount would also be satisfied.

Q. 32. Please look at the two letters now shown you, each headed "Chatham Railroad Company, president's office," dated respectively "Raleigh, N. C., May 9th, 1871," and "Raleigh, June 8th, 1871," addressed "Messrs. Baltzer & Taaks, Exchange Place, New York: Gentlemen," and signed "W. J. Hawkins, president," copies of which are made part of this question, marked B. & T., No. 2, and B. & T., No. 3, and state whether or not your firm received said letters in due course of mail, and if you recognize the signature thereto; and, if yea, please state what relation, if any, said letters had to the payment of said iron, and the negotiations referred to in your preceding answer.

(Last part of above question objected to.)

A. We received these letters in due course of mail; I recognize the signature thereto; these letters had the effect of confirming us in the belief and expectation that it was the intention of Mr. Hawkins, president of the Chatham Railroad Company, to satisfy us in the course of his negotiation regarding our old claim.

(Latter part of answer objected to.)

Q. 33. Did or did not said Hawkins, at any time, in his conversasations with your firm subsequent to the month of December, 1868, question or deny the receipt of the four deliveries of iron of which you have testified by the Chatham Railroad Company, and that you should be fully and justly paid therefor previous to the year 1872?

(Objected to.)

A. He has never done so.

255 Q. 34. What was the gross amount in money of the deliveries 2, 3, and 4 of said iron tendered on the second day of November, 1868, and what amount was paid thereon, and what amount remains to be paid?

A. The gross amount was $167,098.93, on account of which was paid $73,483.16, leaving unpaid $93,615.59.

Q. 35. Have you or have you not said 150 bonds in your possession; or, if not, what portion of the same, if any, have been disposed of, at what time, and in what manner, and to whom?

A. They are all in our possession, with the exception of ten bonds which Mr. Pickrell bought for the Chatham Railroad Company in January, 1869.

(Objection to the latter part of the answer.)

Q. 36. Giving credit for the amount received from said Pickrell for said ten bonds, please state, as near as you can, the amount remaining due on the purchase of said iron.

A. About $87,500.

Adjourned to the 23d inst., at 10 a. m.

THURSDAY, *October* 23*d*, 1879.

Present: Counsel as before.

Cross-examined by Mr. FULLER, counsel for defendants:

Cross-Q. 37. Had the firm of Baltzer & Taaks, bankers, as you have stated, been in the habit of furnishing railroad iron?

(Question objected to, as irrelevant.)

A. No, sir.

Cross-Q. 38. What was the inducement for Baltzer & Taaks to become parties to the contract of the 11th September, 1868, for the furnishing of railroad iron, as in said contract set forth?

(Objected to, as irrelevant.)

A. The friendly relations that had for a long time been existing between us and Schepler & Co. first made us entertain
256 the business, and when we saw it we thought there would be a large negotiation of good bonds.

Cross-Q. 39. Before entering into said contract, did you not have a personal acquaintance with John F. Pickrell?

A. No, sir.

Cross-Q. 40. Before entering into said contract, did you not inquire into the financial condition of John F. Pickrell?

(Objected to, as irrelevant; and for the further and special reason that the contract, as executed, shows that the iron was to be paid for from the proceeds of North Carolina State bonds issued to the defendant, The Chatham Railroad Company, for whom the iron was purchased, and did not involve the personal responsibility of John F. Pickrell.)

A. I inquired concerning Mr. Pickrell, and learned that his means probably did not amount to much; that he was an honorable, straightforward, good business man.

Cross-Q. 41. Before entering into said contract, did you not know the financial condition of Greenleaf, Norris & Co.?

(Objected to, as irrelevant; and for the further and special reason that Greenleaf, Norris & Co. were not a party to or mentioned in the written contract, for which the complainant became parties.)

A. I do not know that I did.

Cross-Q. 42. Do you know that you did not?

(Same objection.)

A. I do not.

Cross-Q. 43. Before entering into said contract did you not know the financial condition of Charles Gould, and that it was good?

(Objected to, for above reasons.)

A. I do not think I knew that there was any such man or firm in existence.

Cross-Q. 44. Before entering into said contract did you not take

especial pains to inform yourself with reference to the
257 regularity, validity, and goodness of the North Carolina State bonds issued for the Chatham Railroad Company, mentioned in said contract?

A. The credit of the State of North Carolina at that time was unimpaired, and its issues were considered good in the market.

Cross-Q. 45. Were not said bonds, at the time of said contract being made, on the stock board of New York?

(Objected to, as the contract and pleadings show that the particular bonds to be used in the payment for iron under said contract had not been issued.)

A. All North Carolina State bonds, with the exception of the old issues, were at that time, as far as I know, dealt in under the designation of new bonds, but these special bonds had not then been issued.

Cross-Q. 46. You have stated that when said contract was made Pickrell and Whitford had just been introduced to you; did you contract with them, or either of them, with reference to said bonds solely upon information derived from them, or did you make your own inquiries with regard to said bonds and base your contract upon what you learned about the same?

A. The basis of said contract at that time was good and valid bonds of the State of North Carolina.

(This answer objected to by defendants, as not responsive.)

A. I have no positive recollection as to the inquiries I had made prior to closing said contract.

Cross-Q. 47. Then do I understand you to say that Baltzer & Taaks, bankers, of New York city, made so large a contract as that of the 11th September, 1868, without inquiring, except from two strangers, as to the value of the North Carolina bonds therein mentioned?

(Objected to, as assuming what the witness has not stated, nor been asked to state, beyond the form of the question just put.)

A. I did not say so.

258 Cross-Q. 48. What did you say?

(Objected to, as founded upon no basis, unless upon the answer previously given, to which the attention of the witness must be called, and the answer or answers given must each speak for themselves.)

A. I said what I stated.

Cross-Q. 49. Did you make said contract upon the representations of Whitford and Pickrell alone as to the value of the North Carolina bonds or not?

A. The contract provided for payment and aside of the represensations of Whitford and Pickrell; that was sufficient to us at the time of closing said contract.

(Answer objected to, as not responsive.)

Cross-Q. 50. Question 49 repeated.

A. Mr. Hawkins, president of the Chatham Railroad Company,

also represented to us the condition of this road and the quality of the North Carolina State bonds.

Cross-Q. 51. Do you say that you ever had a conversation with Hawkins on the subject-matter of your contract with Pickrell, to wit, the contract of 11th September, 1868, before said contract was made?

A. As far as I recollect we had such a conversation with William J. Hawkins, president of the Chatham Railroad Company, prior to the execution of said contract.

Cross-Q. 52. Has not your deposition been taken about this same subject-matter in a suit at law in which Baltzer & Taaks were plaintiffs and the Raleigh & Augusta Air-Line Railroad Company and others were defendants, pending in the circuit court of the United States for the western district of North Carolina?

A. I think so.

Cross-Q. 53. In said deposition were you not asked cross-interrogatory No. 4, as follows: "When did you first have a conversation with Hawkins on the subject-matter of your contract with Pickrell, and can you undertake to state in substance what it was, and what
259 was said by Hawkins:" and did you not answer said question, "I think it was a few days after making the contract," &c., as set out fully in said deposition, a copy of which you have before you?

(Objected to, as propounded to the witness, because it does not represent his statement on this examination, wherein he has stated that his conversation with Hawkins, president, was before the execution of the contract bearing date 11th September, 1868, and which he has also testified was not executed until after the 21st of September; and that the conversation occurred between the date of the contract, to wit, the 11th, and the time of signing it was after the 21st.)

A. When in said interrogatory I spoke of the making of the contract, I had its date, the 11th of September, in my mind, whereas the contract was signed and executed on the 24th of September, 1868; and between these two dates we had that conversation with Mr. Hawkins, as I have herein stated.

Cross-Q. 54. I ask you if you ever had any conversation, or any acquaintance, with Dr. W. J. Hawkins before you made said contract and agreed to take the North Carolina State bonds, as therein set forth?

(Question objected to, because the contract shows that said Hawkins became a party to it, and that his name was adopted in the place of Whitford's before any signatures were affixed thereto, and that his name is shown by the record to have been considered in the making of the contract.)

A. I never had any acquaintance with Dr. Hawkins prior to the first conversation we had with him at our office, some time between the 11th and 24th of September, 1868.

Cross-Q. 55. Then, were you influenced in agreeing to take said bonds by anything Hawkins said?

A. Certainly, sir.

Cross-Q. 56. If you never had any conversation or acquaintance with Dr. Hawkins before you agreed to take said bonds, how can you say certainly you were influenced to take them by what Hawkins said; please explain?

260 (Question 56 withdrawn, as witness has modified and corrected his answer to cross-question 50.)

Cross-Q. 57. Did you ever have any conversation with Dr. W. J. Hawkins before you agreed to take the said North Carolina State bonds?

A. Yes, sir.

Cross-Q. 58. Did you not agree to take said North Carolina State bonds on or before the 11th September, 1868?

A. No, sir.

Cross-Q. 59. Did you not swear in your present deposition, on your examination-in-chief, that your firm and Schepeler & Co., on the one part, and Pickrell and Whitford on the other part, agreed that you would deliver iron and be paid out of said State bonds, substantially as set out in the contrrct of 11th September, 1868, and you got your lawyer to draw Exhibit P., No. 5, pursuant to said agreement, which was to be sent to Hawkins, who was then in North Carolina, for his inspection, prior to 11th September, 1868?

(Question objected to, because it does not give a fair statement of the witness' testimony, as it only gives a stage of the negotiation which the witness testified commenced with Exhibit P., No. 5, and, though dated the 11th September, was not executed until after the 21st, to wit, on the 24th, and that the agreement was not resolved into the contract until executed.)

A. I have always understood, and I do not believe I have stated to the contrary, that we were to be paid not in the bonds, but out of the proceeds of bonds; I think that is the spirit of the contract.

(Defendants object that this answer is not responsive to the question, and repeat cross-question 59.)

Cross-Q. 60. (Cross-Q. 59 repeated.)

A. There was no agreement so long as it was not executed.

Cross-Q. 61. I repeat cross-question 59, and request an answer.

A. The *projet* of agreement was drawn up by our lawyer
261 prior to being sent to Doctor Hawkins, and in the presence Whitford, Pickrell, and myself; it was on or prior to 11th September, 1868.

Cross-Q. 62. When the *projet* of agreement, as stated in your next preceding answer, was drawn up by your lawyer, had you ever had any conversation with Doctor W. J. Hawkins?

A. No, sir.

Cross-Q. 63. Then how can you say you were influenced in agreeing to contract with reference to North Carolina State bonds, as set forth in the third paragraph of said *projet*, by conversations with Doctor Hawkins?

A. I repeat, the contract was not then executed, and the taking of bonds occurred much later.

Cross-Q. 64. I have certainly not asked you about taking the bonds, but I ask you again, was your agreement to take the bonds, as set forth in said *projet*, made or influenced by conversations you had with Doctor Hawkins; please answer yes or no?

A. No.

Cross-Q. 65. Then, do I understand you to say that you agreed to take said bonds, as set forth in said project, solely upon the representations of Pickrell and Whitford?

(Question objected to, as tending to place the witness in a position not justified by his answers given in his examination-in-chief, wherein he stated that while the negotiations commenced with Whitford and Pickrell on or previous to the 11th September, that Hawkins became a negotiating party between that and the 24th, at which last date the contract was signed, and that this testimony was directed to all that proceeded before signing the contract as to the validity of these bonds, and not only to a portion.)

A. No, sir.

Cross-Q. 66. Whose representations beside theirs?

A. Doctor Hawkins', which were given prior to the execution of the contract.

262 Cross-Q. 67. Whose representations, other than those of Whitford and Pickrell, induced you to make the agreement called the *projet*, which is Exhibit P., No. 5?

A. Considering the *projet*, not the final agreement, the representations of Doctor Hawkins were given after the *projet* was composed.

Cross-Q. 68. I repeat cross-question 67; will you answer it or not?

(Question as repeated objected to, as the witness has substantially answered the same, wherein he says the representations of Doctor Hawkins in regard to the validity of bonds was given after the *projet* was composed, and that the witness has therefore not refused an answer.)

A. No, sir.

Cross-Q. 69. Who prepared the contract which was entered into and executed between Baltzer & Taaks and Schepeler & Co. of the one part, and John F. Pickrell the other, of the date of September 11, 1868; was it not your lawyer?

(Question objected to, as the witness has stated several times, both upon his direct and cross-examination, that both the *projet* and the contract, as finally executed, was prepared by his counsel, in the presence of and with the advice of the defendants Hawkins, Whitford, and Pickrell, one or all being present at every stage of the contract.)

A. Yes, sir.

Cross-Q. 70. Did not said contract dated 11th September, 1868,

exactly express the final agreement between the parties thereto, with reference to the subject matter thereof?

Counsel for complainant, calling attention of counsel for the defendants to the fact that there were two papers executed bearing that date being Exhibits A and B to the bill, is requested to make his question specify which paper he alludes to, or whether he alludes to both.

Counsel for the defendant refers to Exhibit A alone to the bill.

A. No, sir; not the whole.

263 Cross-Q. 71. Wherein did said coutract fail to express the final agreement of the parties thereto?

(Objected to, as there being two papers signed and executed, both dated the same date, in reference to the same subject matter, being Exhibits A and B to the bill, and each being in writing, wherein they differ, or the one modifies the other, must be determined by the papers and not by the verbal statement of the witness.)

A. In regard to the securities and the payment of the iron, and in regard to the security of the Chatham Railroad Company therein in the contract, the second part of the contract expresses in the following words:

"And I agree to unite in drawing the orders therein provided for at the times and in the manner therein set forth; provided, however, that it is hereby distinctly understood and agreed that whenever any delivery of said bonds is to be made, and any order for such delivery is required pursuant to said contract, I am to have the option and right to pay in money the sum payable under said contract for the iron, in respect to which such delivery of bonds is required at the contract price; that is to say, at the rate of forty-nine dollars and forty-six cents per ton, on the presentation of the bill of lading, and twenty-nine dollars and ninety cents per ton on the delivery of the iron; and upon such money payments being made by me I shall have the right to withdraw from deposit the bonds which otherwise would have been delivered under said contract, and such bonds shall be delivered to me by said Continental National Bank on the presentation of such joint order as aforesaid, such option and right be exercised by me within five days after being notified in the manner provided in the contract, of the right of said parties of the first part therein named to a delivery of bonds pursuant thereto.

"It is also hereby expressly provided, that in case of loss of the iron, or any part thereof, on shipboard, between the port
264 of shipment and the port of entry or delivery, all payments made on account thereof are to be refunded by said Schepler & Co. and Baltzer & Taaks, as soon as such loss is ascertained.

"New York, September 11, A. D. 1868.

"W. J. HAWKINS,
President Chatham R. R. Co.

"Witness:
"JOHN D. WHITFORD."

Cross-Q. 72. I will ask you, then, Mr. Baltzer, if Exhibits A and B to the bill do or do not express in exact words the final agreement of the parties with reference to the matters embraced therein?

A. I think so.

Cross-Q. 73. Did not Doctor W. J. Hawkins, as president of the Chatham Railroad Company, and individually, fully comply with all the covenants, stipulations, and agreements undertaken or entered into by him as president and individually, as contained in said Exhibit B?

A. Yes, sir; I think he did.

Cross-Q. 74. Did Doctor Hawkins, either as president or individually, ever enter into any other contract about this matter except that marked Exhibit B to the bill?

(Objected to, because the contract Exhibit A shows that Doctor Hawkins took the place of Whitford in that agreement, and acquired the same rights as to the payment for and delivery of iron as were reserved to Pickrell, as is especially shown in the 3d and 5th article, and witness having testified that both constitute but one contract, both should be submitted to him as one contract, and defining the undertaken of said Hawkins, and not one of them separately.)

A. The contract marked A was a contract between Schepler & Co. and Baltzer & Taaks on one side and the Chatham Railroad Company on the other, the name of John F. Pickrell having been used with the concurrence of all parties simply as a matter of
265 form for the more convenient execution of the contract, he residing in the city of New York, whilst the Chatham Railroad Company was a corporation in another State.

(Answer objected to as not responsive to the question.)

Cross-Q. 75. Did Dr. Hawkins ever enter into any other contract about this matter, except the one referred to in your direct examination, which is in writing?

A. None other than Exhibits A and B.

Cross-Q. 76. Were the bonds now in your possession, which you have filed as exhibits in this cause, the same which are described and understood in your contract with Pickrell, and to which the writing executed by Hawkins, to wit, Exhibits A and B, refer?

A. Yes, sir.

Cross-Q. 77. Were the bonds delivered to you in pursuance of the writing executed by Hawkins, and when did you receive them from the Continental Bank?

A. Yes; they were so delivered pursuant to the joint order which we received on or about the 11th November, 1868; I think we received the bonds upon that order from the Continental National Bank on the 21st of said month, at the rate of $640 per bond for one hundred bonds, and $635 per bond for fifty bonds.

Cross-Q. 78. Who composed the firm of Schepler & Co.—are they still living?

A. John F. Schepler and Leon Rosenplanter; they are still living and in Europe.

Cross-Q. 79. How many deliveries of iron did the firm of Schepler & Company and Baltzer & Taaks ever make under the contract marked Exhibit A to bill?

(Question objected to, as the bill alleges four deliveries as the only deliveries made under said contract, and the answers of the defendants admit said four deliveries to have been made, and do not allege any other, and the question as put calls for matters outside the pleadings and not in issue.)

A. Four deliveries.

266 Cross-Q. 80. How much in tons and in price was the first delivery?

A. About 630 tons, amounting to $50,053.21, on the 12th October, 1868.

Cross-Q. 81. Look at account, a copy of which is hereto annexed, marked Exhibit B. & T., No. 13, and made part of this question, and say whether or not that is the bill for the first delivery?

A. It is.

Cross-Q. 82. For that first delivery did you say you received pay in a check of Greenleaf, Norris & Co.?

A. Yes, sir.

Cross-Q. 83. Are you not mistaken about that?

A. No, sir; I think not; my books show it so.

Cross-Q. 84. How do know your books show that you so received pay; when did you examine your books with reference to that matter?

A. I examined my books with reference to that matter several months ago, and I know they so showed it.

Cross-Q. 85. Did you not receive pay for that first delivery of iron by $100,000 of North Carolina State bonds instead of by the check of Greenleaf, Norris & Co., as you have now stated?

A. No, sir.

Cross-Q. 86. Mr. Baltzer, take time to reflect and say if you did not receive pay for said first delivery of iron by $100,000 of North Carolina State bonds at $63,593.46, and not in the check of Greenleaf, Norris & Co., as you have stated.

(Question objected to, for the reason that it is averred in the bill and admitted in the answer that the bonds of the State of North Carolina, described and mentioned in the contracts Exhibits A and B, until on or after the 19th day of October, 1868, and were not brought to the city of New York for some time thereafter.)

A. I know that I did not receive pay in bonds.

267 Cross-Q. 87. I hand you paper marked B. and T., No. 14, a copy of which is filed as part of this question, and ask you whose writing it is, and what it refers to?

A. This paper is in my handwriting, and is a receipt for 100 bonds State North Carolina bonds, not of those deposited in the Continental National Bank, which bonds were given to us as secu-

rity for the first delivery of iron which Mr. Pickrell expressed a desire to have surrendered to him; these $100,000 bonds on the 12th October were called for of Greenleaf, Norris, & Co., and they gave us a check for the amount of the bill of our iron.

Cross-Q. 88. If I understand you, the 100 bonds mentioned in said receipt you delivered to Greenleaf, Norris & Co., and they gave you their check for the precise amount of your iron bill for first delivery, and you had nothing to do with the negotiation or sale of said 100 bonds, is that so?

A. That is so.

Cross-Q. 89. Are you confident that cross-question 88 and your answer thereto states the transaction truly?

A. I am quite confident it does.

Cross-Q. 90. Then look at paper now handed you marked B. & T., No. 15, a copy of which is hereto annexed and made part of this question, and say what said paper is, and give such explanation of the same as you can.

A. The paper is a completed statement on this first delivery, including freight and charges and the check that we received from Greenleaf, Norris & Co., instead of having been for $50,023.51, was for $63,593.46.

Cross-Q. 91. I see no mention made of Greenleaf, Norris & Co., either as sellers or payers for the bonds mentioned in Exhibit B. & T., No. 15; do your books show such mention; and will you please produce the entries on your books to be made part of this examination?

A. The books do show, and I will produce the same.

Cross-Q. 92. It seems by Exhibit B. and T., No. 15, that the $100,000 North Carolina State bonds therein mentioned produced $11,794.27, more than enough to pay Pickrell's bill for
268 said first delivery of iron; how was that balance in Pickrell's favor disposed of?

(Question objected to, as irrelevant.)

A. I cannot tell without having my books present.

Cross-Q. 93. Was that balance placed to Pickrell's credit against subsequent deliveries of iron under the contract?

(Objected to, as immaterial; that there are no issues involved in these pleadings about stating and balancing of accounts between the parties.)

A. I have stated already that I cannot answer without the books.

Cross-Q. 94. Will you or will you not produce the books of Baltzer & Taaks, showing these accounts before the examiner herein, at this office, to-morrow morning?

(Plaintiffs' counsel states that there are no issues raised in either the bill or answers about the statement of account, but, on the contrary, the defendants, The Chatham Railroad Company, its president, Hawkins, and said Whitford, distinctly disavow all dealings

whatever between said defendants and the complainants, Baltzer & Taaks, alleging that all their dealings transpired with said Pickrell, and have by such their answer and pleadings made themselves total strangers to these complainants, unless they mean thereby to treat and admit the said Pickrell as their agent, and that for that purpose they must give such notice as is usual; counsel for complainants, however, would advise them simply to avoid any appearance of concealment, to cause to be prepared an exemplified account touching the matters in reference to said Exhibit B. and T., No. 15, but the complainants are advised by their counsel that they are under no obligations to produce their books before the examiner as proof of any issue involved in this suit.)

A. I shall follow the advice of my counsel.

Cross-Q. 95. Do I understand you to say that, acting under the advice of your counsel, or otherwise, you refuse to produce the books of Baltzer & Taaks, showing the account you kept with John F. Pickrell, about this iron transaction, and the Exhibits A and B, and that you will not produce them for inspection by defendants before the examiner during the progress of this inquiry? Please answer this question yes or no.

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A. Under the advice of my counsel I do refuse.

Cross-Q. 96. I show you papers marked, respectively, B and T, Nos. 16, 17, and 18, copies of which are annexed as part of this examination, and ask you what the same are, and to what they refer, and if they are correct accounts?

A. These are the accounts of Baltzer & Taaks and Schepler & Co., for the second, third, and fourth deliveries of iron under the contract; these are papers, duplicate accounts from the office of Baltzer & Taaks, and are correct.

Adjourned to Friday, 24th, at 10 a. m. sharp.

FRIDAY, *October* 24, 1879.

Present: Counsel as before, 11¼ a. m.

Counsel for defendants were present according to adjournment at 10 a. m. The witness and the counsel for complainants did not appear until this hour, 11¼ a. m.

Counsel for complainants states that having motions in court in which his presence was necessary for the hour of 10 a. m., was compelled to make arrangements for the adjournment of the same, which required the consumption of over an hour's time, which matters had escaped his attention when he agreed to meet at 10 a. m., being in fact an hour earlier than is usual in adjournments in proceedings like the present.

The counsel for complainants informs the defendants' counsel that a statement of the delivery of iron to John F. Pickrell for the Chatham Railroad Company under the contract dated 4th September, 1868, is being prepared from the books of complainants, and is designed to be made part of the deposition of this witness now under examination, but that the producing of said account is not done in recognition of any right of the defendants to call for the

same under the issues involved in this suit, but is done to
270 avoid any appearance of concealment on the part of complainants; that the books of the complainants are necessary to the use of their office, besides being cumbersome, and will not be produced here, but that the defendants may and are invited, if they so desire, to visit the office of the complainants, and in the presence of the examiner, and inspect the account as it stands upon the books of the complainants, if they question the accuracy of the accounts so sworn to and made part of this deposition.

Cross-Q. 97. Will you please state whether or not your books, showing transactions of eleven years ago, are so necessary to your present current daily business as to put you to serious inconvenience by producing them for one hour for defendants' inspection before the examiner herein and in your presence.

(Question objected to, as irrelevant, and for the further reason that the witness has just offered to produce a sworn statement of the account as it appears thereon in reference to the delivery of the iron and the payment therefor under the contracts of 11th September, 1868, and had also offered to permit the defendants to examine said books, in reference to said account, in the presence of the examiner, at the office of the complainants, all of which is done as a matter of accommodation, and as the defendants by their answer and pleadings have established no right whatever to either call for an account or see the books of the complainants in reference to said iron contract, the question now asked the witness is not warranted by law or right, and the witness is advised to make no answer thereto.)

A. I have to follow the advice of my counsel and decline answering this question.

Cross-Q. 98. Do you decline to produce your books, showing the transactions of the iron contracts in 1868, for the reason suggested by your counsel in his statement that such production of books would interfere with your daily business, and besides this the books are too cumbrous, or have you other reasons for not producing your books which contain your record and account of your dealings under said contract?

271 (Question objected to, for the reasons above stated, and for the further reason that it calls for no fact known to the witness pertinent to this suit, for which reason the witness is again advised to make no answer thereto further than, if he chooses so to do, to present the account which he has heretofore tendered, both as an answer to the question and as part of this examination.)

A. I decline to answer, by advice of counsel, and tender a copy of the account.

(The last portion of the witness' answer objected to, and the tendering the account objected to as not responsive to the question.)

Cross-Q. 99. Why will you not produce your books containing your account with John F. Pickrell concerning the iron contract of

September 11, 1868, here before the examiner and in your presence for defendants' inspection, you having referred to said books with said account in one of your answers to a previous cross-interrogatory?

(Objected to, as irrelevant and referring to the reasons previously stated; the witness is advised by his counsel to make no answer thereto; and the latter part of the question is further objected to when it assumes he volunteered any statement about his books and accounts, when in fact his allusion to his books and accounts was called for by the questions of the defendant, and were not otherwise introduced by the witness.)

A. By advice of counsel I have to decline answering this question.

Cross-Q. 100. Do you not decline to produce your books showing the account between John F. Pickrell and yourself under said iron contract, because such books show matters beneficial to the defendants and destructive of the claim you set up in this suit; is not this your reason for not producing said books for inspection; yes or no?

(Question objected to, as irrelevant, and for the further reason
272 that it assumes that the witness has refused the inspection of his books in reference to said iron contract, when, in point of fact, such is not so, but, on the contrary, the witness has not only offered to permit defendants to inspect his books in reference to said iron contract, though they have no right to such inspection, but has also brought and produced a sworn copy of said contract, showing the dealings with said Pickrell under said contract, which is all the books could show when inspected, and, acting under the advice of his counsel, only declined to bring said books to this place, but repeats his offer to permit their inspection at his banking-house, which is equally convenient for the defendant as for him to bring said books here, and acting under this advice he is instructed to make no answer to said question, unless he elects to do so.)

A. No, sir.

Cross-Q. 101. Then, what is your reason for not producing said books here?

(Objected to, as irrelevant, and for the further reason that the witness has already answered the question by assigning his said reasons for not producing his said books at this place, but having offered to furnish their inspection at his office, has not declined in the manner assumed by the question.)

A. I have been advised by my counsel that defendants' counsel has no right to call for my books here; I cannot tell at what moment my people at the office may have to refer back to any old books; I, as well as any other banker or merchant, do not like to have my books carried over the crowded streets of New York city; besides, to-day the trusted porter, whom alone I could confide such a task to, is burying a child, and therefore absent from the office.

Cross-Q. 102. You have at last given an answer and assigned reasons why you decline to produce the books here; will you be ready to produce them here when your trusted porter returns to duty?

(Objected to, as irrelevant and unwarranted, and the witness is instructed to decline giving any answer thereto, unless he elects to make one.)

273 A. I think I have assigned sufficient reasons for refusing to produce the books here.

Answer objected to, as not responsive, and

Cross-Q. 103. Question repeated.

(The counsel for the complainants, in order to save the consumption of time, now offers to proceed to the banking house of the complainants, and in the presence of the examiners, to examine the books containing the account in reference to said iron contract and delivery presented by the witness as a part of his deposition, and upon that being refused, instructs the witness to make no answer to the question unless he elects to do so.)

A. By advice of counsel I decline answering.

Cross-Q. 104. You have summoned the defendants to appear here, at 247 Broadway, at this office, where we now are, to take this examination, and have put yourself on the stand as a witness for complainants; why, then, do you not bring your books here on demand, but, on the contrary, suggest that the examination may be made at your office?

(Objected to, as presenting no fact for the witness to state, but argumentatively assumes what the record does not justify, for the reason that neither the bill nor the answers of the defendants put in issue any facts or matter embraced in the question of the presentation of complainants' books or his dealings with John F. Pickrell, but, on the contrary, the defendants and each of them expressly deny any dealings whatever with the complainants about or in reference to said iron, but claim that the same was bought by Pickrell himself, who they say acted on his own account and responsibility, and not as their agent, they have no right to inquire into any transaction to which they say they have no relation, and when, notwithstanding which the complainants produce a sworn statement of their book touching said iron contract with said Pickrell for the defendants, and offer the inspection of their books to defendants' counsel at their office in verification of said account,

274 they have done more than the law requires them to do, and all that in justice and fairness in a spirit of accommodation they should do.)

A. I have already stated my reasons for so doing.

Cross-Q. 105. Look upon the paper marked B. & T., No. 19, a copy of which is hereto annexed as part of this question, and say what the same is.

A. Said paper, dated New York, Oct. 30, 1868, is an original letter addressed to C. F. Timpson, cashier Continental National Bank, by Wm. J. Hawkins, president of the Chatham R. R. Co., Baltzer & Taaks, John F. Pickrell, and Schepeler & Company.

Cross-Q. 106. Please look at paper now handed you and marked

B. & T., No. 20, a copy of which, similarly marked, is hereto annexed as part of this question, and say what the same is.

A. This paper is an original letter, with the genuine signatures of Baltzer & Taaks, and Schepler & Co., dated New York, Nov. 2, 1868, addressed to John F. Pickrell.

Cross-Q. 107. Is not the iron account which is stated in said letter, Ex. B. & T., No. 20, from the second, third, and fourth deliveries, under the contract of 11th September, 1868?

A. Yes, sir.

Cross-Q. 108. Of the amount mentioned in said Exhibit B. & T., No. 20, to wit, $167,098.73, how much was paid you by Greenleaf, Norris & Co., and, after said payment, how much thereof remained due?

A. Of this amount Greenleaf, Norris & Co. paid us $75,000 in their check, which was cashed, then left a balance unpaid of $92,098.73.

Cross-Q. 109. Look upon paper now handed you, marked B. & T., No. 21, a copy of which similarly marked is hereto annexed as part of this question, and say what the same is.

A. It is an original letter, dated November 2, 1868, addressed to Wm. J. Hawkins by Baltzer & Taaks and Schepler & Co., by their genuine signatures.

275 Cross-Q. 110. In said Exhibit B. and T., No. 21, the writers say to Dr. Hawkins, among other things, as follows: "We now ask you to have the necessary arrangements for payment of the above sum attended to." What arrangements were meant?

A. Such arrangements as the two contracts A and B to the bill provided for.

Cross-Q. 111. You have stated that the balance of the second, third, and fourth deliveries of iron under said contract, not paid for by the check of Greenleaf, Norris & Co., amounted to about $92,098.73. Were bonds delivered to Baltzer & Taaks under the contracts A and B to the bill professedly to settle said balance?

A. There were 150 six per cent. North Carolina State bonds issued in exchange for Chatham railway first mortgage bonds, each for $1,000; they were delivered to Baltzer & Taaks professedly in payment of such balance.

Cross-Q. 112. Were the bonds mentioned in your next preceding answer the bonds mentioned and stipulated for in Exhibits A and B to the bill?

A. They were found amongst the bonds that had been deposited in the Continental National Bank under said contract.

Cross-Q. 113. What did you do with said bonds, or any of them, after they were delivered to you?

A. I kept them, with the exception of ten, which I sold to Pickrell for money, and for which he paid me.

Cross-Q. 114. By whom and at what date were said 150 bonds delivered to Baltzer & Taaks?

A. I think it was on the 21st November, 1868, when they were delivered from the Continental National Bank.

Cross-Q. 115. Did you ever have any other than these 150 North Carolina six per cent. bonds?

A. There were altogether 250 bonds of $1,000 each withdrawn from and delivered by the Continental National Bank to Baltzer & Taaks at the same time.

Cross-Q. 116. Of that number you say you sold Pickrell ten, kept 140, which you now have. What became of the other 100?

276 A. The other 100 were sent for by Greenleaf, Norris & Co., when they gave us their check for $75,000.

Cross-Q. 117. Did you not sell those 100 bonds to Greenleaf, Norris & Co. at the round price of $75,000?

A. No, sir.

Cross-Q. 118. When and to whom and at what price did you sell 150 North Carolina bonds during the month of November, 1868?

(Objected to, as assuming in making of a sale of 150 bonds which has not been testified to by the witness, and the question as put is illegal.)

A. I never sold any 150 North Carolina State bonds in the month of November, 1868.

Cross-Q. 119. Did you not sell 100 North Carolina State bonds for and on account of John F. Pickrell on the 20th day of November, 1868; and will not your books, if produced, show such sale?

A. I never sold any bonds for and on account of John F. Pickrell, and my books will not show that.

Cross-Q. 120. Did you not sell, on the 21st day of November, 1868, fifty North Carolina State bonds for and on account of John F. Pickrell; and will not your books, if produced, show the same?

(Objected to.)

A. I did not, nor did my firm.

Cross-Q. 121. Look upon the paper marked B. & T., No. 22, a copy of which similarly marked is hereto annexed, and say what the same is.

A. This is a letter dated New York, November 20, 1868, addressed to John F. Pickrell by Baltzer & Taaks, whose genuine signature it bears, accounting for 100 of the 150 North Carolina bonds then in our hands.

Cross-Q. 122. Look upon the paper now shown you, marked B. & T., No. 23, a copy of which similarly marked is hereto annexed as part of this question, and say what said paper is.

277 A. The paper is a letter addressed by Baltzer & Taaks, whose genuine signature it bears, to J. F. Pickrell, dated New York, November 21, 1868, accounting for fifty North Carolina bonds.

Cross-Q. 123. In Exhibit No. 22, B. & T., which is a letter of Baltzer & Taaks to John F. Pickrell, city, dated New York, November 20, 1868, you say: "We have sold to-day 100m. North Carolina 6's bonds at 64," etc. What is the meaning of that language as used?

A. This is very often used in the accounting for securities.

Cross-Q. 124. In said letter you say: "Producing $62,493.60, which we apply to payment of account of bill for second, third, and fourth

deliveries of iron," etc. Did you make such application, and do your books show the same?

A. We did make such application, and our books show the same.

Cross-Q. 125. In the letter of Baltzer & Taaks, marked Exhibit B. & T., No. 23, dated New York, November 21, 1868, and addressed John F. Pickrell, city, you say: "We have sold to-day 50m. North Carolina 6's, 63½, 831,750; 1½ per cent. equalization of interest, 8750; 1-10 per m. tax, 318, 753, 18; producing to your credit 830,996.82." Was this amount placed to said Pickrell's credit on account of iron contract on the books of Baltzer & Taaks, and will the books when produced show the same?

A. Yes, sir.

Cross-Q. 126. You say, if I understand you, that though Exhibits B. & T., Nos. 22 and 23, report 150 North Carolina bonds sold for and on account of John F. Pickrell, and proceeds applied to payment of his bill for second, third, and fourth deliveries of iron, and proceeds passed to said Pickrell's credit, yet the bonds reported sold were not actually sold; is this so?

A. Yes, sir; that is so.

Cross-Q. 127. If the bonds were not actually sold, how did you arrive at the prices of 100 bonds at 64 on the 20th day of November, 1868, and 50 at 63½ on the next day, to wit, on the 21st day of November, 1868?

278 A. By agreement through Mr. Pickrell, who conferred with Raleigh, taking as a basis the prices ruling on those days at the New York Stock Exchange for new North Carolina State bonds.

Cross-Q. 128. How do you know that Mr. Pickrell conferred with Raleigh, as stated in your last answer, except by hearsay?

A. He said so.

(Objected to, as not responsive.)

(Question objected to, because after asking the question for his knowledge, seeks to anticipate his answer by adding the words "except by hearsay" before the witness had stated whether his knowledge was or was not by statements made to him by Pickrell, or inspection of papers or telegrams, or any other source of knowledge.)

(The words "except by hearsay" form a part of the original question before it was propounded to the witness by the examiner.)

Cross-Q. 129. The first, second, third, and fourth deliveries of iron were made under the contract, as you have stated; the fifth, sixth, and seventh were never made; the eighth was the cargo of the Anne McCann, made at Portsmouth, Virginia, in February, 1869; is this so or not?

(Objected to.)

A. As far as I know, there was never any delivery of iron made under the contract after the first, second, third, and fourth deliveries; the cargo by the Anne McCann was no delivery under the contract.

Cross-Q. 130. I show you paper marked B. & T., No. 24, a copy of which similarly marked is annexed as part of this question, and ask you what such paper is?

A. It is an account by Schepler & Co., and by Baltzer & Taaks of a delivery of iron which we were then ready to make.

Cross-Q. 131. Was that not for the cargo of the Anne McCann,
279 bound for Norfolk, Virginia, February 20, 1869, and marked eighth delivery on contract September 11th, 1869, for ten thousand tons railroad iron.

(Objected to, because the witness has already stated that there was no other iron delivered under the contract, except the four deliveries mentioned, and which are alleged in the bill and admitted in the answer, and that all deliveries of iron beyond that were outside the contract and not involved in this suit, however such deliveries were made.)

A. Yes, sir.

Cross-Q. 132. After reporting the sales of bonds to John F. Pickrell, as by your letters of the 20th and 21st November, 1868, did you not consider that you had no further claim or demand on account of said iron contract, except to be paid for the cargo of the Anne McCann?

A. No, sir; not that I know of.

Cross-Q. 133. I show you paper marked B. & T., No. 25, a copy of which, similarly marked, is made part of this question, and ask you what the same is?

(The question and paper offered to be produced objected to.)

A. That is a letter from Baltzer & Taaks to Schepler & Co., addressed to J. F. Pickrell, and dated New York, April 21st, 1869.

Cross-Q. 134. Was the cargo of the Anne McCann not by an arrangement between Baltzer & Taaks to Schepler & Co. and John F. Pickrell, subsequently sold to and paid for by other parties?

A. Yes; I think so.

Cross-Q. 135. Has Baltzer & Taaks ever released John F. Pickrell from obligation of receiving any more iron under the contract of September 11, 1868?

If there is such a release in writing it should be shown to the witness before answering the question.

The counsel for the defendants not producing any writing for the witness to inspect, if they have such in their possession, the
280 witness is advised that before he answers he has a right to do so, to ask for the production of such writing to refresh his memory in a matter of that remote date, if he elects to do so.

A. I don't recollect positively.

Cross-Q. 136. What is your best impression about it?

A. Well, I think something has been done of that kind.

Cross-Q. 137. Look upon the paper now shown you, marked B. & T., No. 26, a copy of which, similarly marked, is hereto annexed as part of this question, and say what said paper is.

A. A letter containing the genuine signature of Baltzer & Taaks, addressed to J. F. Pickrell, dated New York, August 11, 1869.

Cross-Q. 138. You stated in your examination-in-chief that the contract dated September 11th, 1868, was signed some time in September, day not recollected, and afterwards in your cross-examination you fix the date as the 24th of September; have you any memoranda or entries fixing the 24th of September as the true date? If yea, please produce the same.

A. I had forgotten the date of signing the contract, but my memory was refreshed by a letter of J. F. Pickrell, dated 21st of September, in which he requests the Continental National Bank to be substituted for the U. S. Trust Co. as depository under the contract; and then looking again at the contract itself I found that the notary's certificate appended to it is dated the 24th September, 1868; I herewith produce said letter, and ask that the same be copied and annexed, marked B. & T., No. 27.

Cross-Q. 139. Were the two papers marked Exhibit A and B of the bill executed at the same time and place; and if otherwise, how?

A. As far as I recollect the paper Exhibit B was signed and executed a few days later then Exhibit A.

Cross-Q. 140. Who prepared Exhibit B?

(Objected to, as immaterial.)

A. I do not know.

281 Direct examination resumed:

Q. 141. You were asked in your cross-examination as to the shipment of the delivery of iron on or about the 12th of October, 1868; will you please look at the paper now shown you, dated New York, October 12, 1868, addressed to Messrs. Baltzer & Taaks, and signed John F. Pickrell, made part of this question, marked Complainants' Exhibit B. and T., No. 28, and state in whose handwriting the same is, and what reference it has to the said shipment of iron of October 12, 1868?

(Question objected to, and the introduction of that letter objected to, because of the introduction of new matter by complainants.)

A. The letter is in Mr. Pickrell's handwriting, and gives different instructions for him and others as to the shipment of 630 tons of iron per J. A. Armstrong.

Q. 142. You was also asked in your cross-examination as to whether your firm did not sell 100 North Carolina State bonds to Greenleaf, Norris & Co. on or about the 21st of November, 1868, for $75,000; will you please state whether or not the disposal of said 100 bonds was not done under the direction of John F. Pickrell after the same were placed in the possession of your firm?

(Objected to, as incompetent, against all the defendants except John F. Pickrell.)

A. Mr. Pickrell wrote us on that day, I think, that Greenleaf, Nor-

ris & Co. would send for $100,000 North Carolina bonds, which we should deliver to them, receiving at the same time their check for $75,000, which was done.

(Answer objected to, as above.)

Q. 143. Will you now please look at the letter headed office of John F. Pickrell, No. 60 Wall street, New York, November 21, 1868, and signed John F. Pickrell, and addressed to Messrs. Baltzer & Taaks, No. 50 Exchange Place, and state whether or not you know the handwriting of said letter, and if it was received by your
282 firm, and whether it is one referred to in your preceding answer (letter referred to is marked Complainants' Exhibit B. and T., No. 29)?

(Objected to.)

A. It is Mr. Pickrell's letter in his own handwriting, as referred to in my preceding answer.

Q. 144. Did you or did you not deliver said bonds as directed by said Pickrell in the manner stated in said letter, and not otherwise?

A. I did so.

Q. 145. At the time of making said contract, dated 11th September, 1868, for the sale and delivery of said iron, had you or had you not any knowledge of such a firm as John F. Pickrell & Co., composed of Greenleaf, Norris & Co., or Charles Gould, or any one else composing such firm, with which you were dealing and who were responsible to you for the purchase of said iron?

(Objected to.)

A. I never knew of any such firm as John F. Pickrell & Co., as, had I done so, I would not have been as lenient as I was.

Q. 146. Besides the matters you have stated in your direct and cross examination of the acts and doings of said Pickrell in reference to said Chatham Railroad Company in the purchase of said iron and the disposal of its bonds, did or did not said Pickrell, within your knowledge, act for said Chatham Railroad Company in any other respect, and previous to the 11th day of September, 1868?

(Objected to.)

A. He borrowed money for the Chatham Railroad Company.

Q. 147. Please look at the letter now shown you, headed office of John F. Pickrell, No. 60 Wall street, New York, September 10, 1868, and signed John F. Pickrell, for Chatham Railroad Company, and addressed to Messrs. Baltzer & Taaks, and state in whose handwriting the same is, and whether your firm received the same, and to
283 what the said letter refers, which said letter is marked B. & T., No. 31, and made part of this deposition.

(Objected to.)

A. The letter is in John F. Pickrell's handwriting; it was received by our firm, and refers to a loan which Pickrell had obtained from us for the Chatham Railroad Company, and which was repaid by Greenleaf, Norris & Co.

Adjourned to the 25th inst., at 11 a. m.

SATURDAY, *October* 25—11 a. m.

Present: Counsel as before.

Q. 148. In the cross-examination you were also shown two communications, marked, respectively, B. & T., No. 20, B. & T., 21, dated New York, November 2d, 1868, and addressed one to John F. Pickrell, present, and the other to Wm. J. Hawkins, present, and signed by your firm, in reference to the delivery of iron; will you please state for what reason, if any, you addressed Hawkins as well as Pickrell?

A. Under a contract dated September 11, 1868, we were required to give such notices both to Mr. Hawkins and to Mr. Pickrell.

Q. 149. You were also shown as part of you cross-examination two communications, one dated New York, November 20, 1868, and the other New York, November 21, 1868, addressed to John F. Pickrell, city, and signed by your firm, marked Exhibits B. & T., No. 22, and B. & T., No. 23, advising said Pickrell of a sale of 150 bonds; will you please state fully and distinctly the facts to said transaction, how it occurred, whether or not with the knowledge of said Pickrell and the Chatham Railroad Company, and how said transaction terminated, to the best of your knowledge and recollection?

(Objected to.)

A. These letters were written in order to give statements showing the amounts, prices at which these 150 bonds were
284 taken by us to account with the consent of all the parties, as required by the contract, with the knowledge and by request of Pickrell, Whitford, and Hawkins; we had made efforts to place these bonds on and dispose of them in a European market; these efforts had been partly successful, when all further progress was put a stop to by rumors that these bonds would be declared unconstitutional, by the fact that they were excluded from dealings at the exchanges, which finally culminated in their becoming valueless for any purpose whatsoever; we had at once communicated with all the parties to the contract asking to be paid for iron; they told us that they had no other means to pay us except these bonds, but they promised that these bonds would be made good, and, if not, that they would either be replaced by first-mortgage bonds to be issued by the road; also that we would get the negotiation of a large amount first-mortgage loan, which would be required for the continuation of building this road, in which transaction we would be paid for our iron.

Q. 150 At the time you so advised the parties to said iron contract that said bonds had failed to be a source of payment for said iron, and that you required payment therefor in money, to wit, about the first of December, 1868, did they, or either of them, deny or question the right of your firm to make such demand, and their obligation to pay you for your iron under said contract as then delivered and received by them?

(Objected to.)

A. No, sir.

Q. 151. Did you or did you not know, or did your firm have any knowledge that at that date, to wit, about the first of December, 1868, the Chatham Railroad Company had in the hands of its agents, said Pickrell and Whitford, or either of them, the sum of nearly $400,000, subject to their order, in the banking-house of Greenleaf, Norris & Co.?

(Objected to.)

A. None whatever, sir; had we known that, we would have had our money quick enough, but they plead poverty and in-
285 ability to pay, and we exercised patience and forbearance; that they all asked us for.

Q. 152. In your cross-examination you were also shown an account current, dated New York, February 20, 1869, rendered in the name of John F. Pickrell, purporting to show eight deliveries of iron, marked Exhibit B. and T., No. 24; now will you please look at said account and state why it was rendered in that form?

A. Deliveries five, six, and seven had been presented but not received; this cargo by the Ann McCann, being the eighth delivery, had previously been requested by the Chatham Railroad Company to be directed to Norfolk, Virginia, which accommodation to them, as provided for in contract, had been done; the account as submitted in Exhibit 24 had been presented, but the agent of the Chatham Railroad Company declared that there were no funds to pay for it; the cargo, therefore, on arrival at Norfolk, went into store, when finally we were told that the Raleigh & Gaston Railroad Company would take it off our hands at about $73 a ton, which at last, as we could see no other chance to dispose of it in Norfolk, we accepted; the Raleigh & Gaston Railroad Company gave its note for it, which was paid on the first of May, 1869, entailing upon us a loss of about $6,000, as compared to contract prices.

Q. 153. Have or have not the said 150 bonds ever been out of your hands since your firm received them under the sale so reported to said Pickrell, excepting the ten, which you have testified were taken back by said Pickrell, on or about the 19th January, 1869, and do you continue to hold the said identical bonds?

(Objected to.)

A. They have never been out of our hands except to serve in these proceedings, and we hold the identical bonds now.

Q. 154. What disposition were you compelled to make, if any, of the fifth, sixth, and seventh deliveries noted on said account, Exhibit B. and T., No. 24, and at what amount of loss, if any?

(Objected to.)

286 A. We had to resell this iron in the market, and also when going into this whole business, we did not look to a profit on the iron, our object being the bond transactions; still we suffered a considerable loss in the realization of these, about 2,000 tons of iron, which loss I do not now know, but cannot have fallen short of about $10,000 in the aggregate.

Q. 155. You were also shown, and which was made a part of your cross-examination, a communication dated New York, April 21, 1869, addressed to John F. Pickrell, Esq., New York, and signed by your firm, and marked Exhibit B. and T., No. 25, which upon its face, referring to the difficulties surrounding the parties to said iron contract, purports to relieve them from any further deliveries of iron until the happening of certain events stated in said letter. Will you please state whether or not in the writing of said letter you intended in any manner, either directly or indirectly, to abandon or surrender the amount due you on the iron which had been delivered under deliveries two, three, and four.

(Objected to, as the paper speaks for itself.)

A. I did not in this letter intend, directly or indirectly, to abandon or surrender any claim for money due us on deliverings of iron under contract numbered 2, 3, and 4, Pickrell, Whitford, and Hawkins claiming our forbearance and asking to be given time in the execution of this contract, as an assistance and aid for the future; we did not hesitate to show them our friendly disposition, as expresed in this letter.

Q. 156. There was also shown you and made part of your examination a communication dated New York, August 11th, 1869, addressed J. F. Pickrell, Esq., New York, signed by your firm, marked as Exhibit B. and T., No. 26, purporting to release said Pickrell from the obligation of receiving any more iron under contract, dated 11th September, 1868, and considered the same as closed. Will you please state whether or not, in thus releasing said Pickrell from receiving any more iron under said contract, that you meant to release either him or anybody else that might be lawfully bound from the
287 payment of any money due your firm for the iron which had been delivered, and the payment for which was suspended, as stated in your preceding answer.

(Objected to as leading, and the writing referred to will speak for itself and generally.)

(Complainants' counsel states that the paper being inquired about sets up the matter and facts not put in issue in the pleadings, or brought in by the direct examination of the witness, but is both new and irrelevant matter introduced by the defendants under cover of their cross-examination, and is therefore to be treated as direct, and subject to cross-examination by the complainants to any extent they may choose, and is in no manner a leading question.)

A. In writing this letter we did not intend to nor did we release Mr. Pickrell or anybody else legally bound to pay us the balance due us on iron in deliveries 2, 3, and 4, but we simply intended to and did give release from obligation to receive any more iron under contract dated 11th September, 1868.

Q. 157. In your cross-examination you were also interrogated as to whether said iron contract was not released by your firm some time in the year 1869; I now ask you to look upon the papers shown you and made part of this question, Complainants' Exhibit B. and

T., No. 32, and Exhibit B. and T., No. 33, respectively, the first being entitled and dated office of John F. Pickrell, 42 Broadway, New York, August 31, 1869, and the other dated New York, August 26, 1869, addressed to John F. Pickrell, present, and signed Baltzer & Taaks, with an order annexed thereto, addressed to the Continental National Bank, requesting the delivery of certain bonds, signed Baltzer & Taaks and Scheplar & Co., and state what said two papers are, and by whom written, and for what purpose, to the best of your knowledge and belief, and especially whether or not they have any relation to the canceling of said iron contract.

A. The letter dated New York, August 26, 1869, is a copy of one addressed by Baltzer & Taaks and Schepler & Co. to John
288 F. Pickrell, covering an order on the Continental National Bank for the delivery to bearer of 850 North Carolina Chatham railroad bonds of $1,000 each, numbered from 1,601 to 2,451, both inclusive, deposited in its vault for safe keeping; these bonds were the remainder of those deposited in the Continental National Bank, for security on iron contract dated 11th September, 1868; these bonds were released by us, as we had given release from obligation of receiving any more iron under said contract, and as the bonds had become absolutely valueless; the letter dated New York, August 31st, 1869, is a letter written by John F. Pickrell, in his own handwriting, addressed to Baltzer & Taaks, acknowledging receipt of the former letter and the order therein contained.

Q. 158. In your cross-examination, you were interrogated as to the accounts of your firm with John F. Pickrell, in relation to said iron contract, which you then tendered to deliver; I now ask you to look at the paper now shown you, marked B. and T., No. 34, and made part of your deposition, and state whether or not the same is, or is not, a correct statement of the balance sheet of said account as they appeared on your books.

(Objected to by the defendants generally and specially as follows: 1st. The said paper now shown the witness was never called for by defendants in their cross-examination. 2d. Because the said paper only purports to be a copy from complainants' books, which said books, being the originals, are not lost or destroyed, but are sworn by witness to be now in complainants' possession, and which books, though often called for by defendants to be produced for their inspection, the witness, being one of complainants, has persistently refused and declined to produce.)

(Complainants' counsel, referring to his previous statement, wherein the account of the dealings between complainants and Pickrell are not put in issue by the pleadings, but notwithstanding that being so, the complainants produced a sworn copy thereof, and also tendered the inspection of their books and said account at their office
289 by the defendants, in the presence of the examiner, denies the correctness of the exception, on the ground that complainants refused the inspection of their books, as assumed in the objection last taken, and the complainants now again tender the inspection of

said account on their books before the concluding of this examination, though the defendants have no legal right thereto.)

A. This is a correct statement, copied from our books from the account of John F. Pickrell, concerning the transactions under the contract dated Sept. 11, 1868.

Q. 159. Please look again at said account, on the credit side, at the items dated November 21st and 23d, covering 150 of said bonds, whether or not they are the same bonds which were taken to account by your firm in the purchases formerly reported in Exhibits B. and T., No. 22 and 23, to be delivered in Europe, and which were not sent forward and delivered for the reasons you have before stated?

(Objected to as last above.)

A. Yes, sir; they were.

Q. 160. Did or not said two items represent the same bonds which your firm tendered to return to the defendants and requested the payment of the amount represented by them for iron, when said bonds were repudiated on the market on or about the 1st or 2d December, 1868?

(Objected to.)

A. Yes, sir.

Q. 161. Please look at the paper, now shown you, dated New York, January 19, 1869, Mr. John F. Pickrell to Baltzer & Taaks, &c., and which is made part of the question, marked Exhibit B. and T., No. 35, and state what it is?

A. It is a bill of $10,000 of these North Carolina State bonds, which Mr. Pickrell on January 19, 1869, took back from us for the Chatham Railroad Company, paying for the same $61.50.

(Answer objected to, as the paper speaks for itself.)

Q. 162. Besides the ten bonds so taken back by said Pick-
290 rell, does or does not the remainder of said bonds of 150 bonds, to wit, 140 bonds, still remain in your possession?

A. They do.

Recross-examination:

Recross 163. Since you have filed what you allege to be a copy from your books of the dealings of complainants with John F. Pickrell, under the iron contract of September 11, 1868, will you not be pleased to produce before the examiner the books from which, as you allege, said account was taken, in order that the defendants may have the poor privilege of comparing the same with the original entries, and satisfying themselves as to whether it is a true copy, or will you still refuse to produce said books before the examiner here?

Counsel for complainants, referring to his former statements, to be treated as herein repeated, advised the witness, as he has heretofore done, to tender to the defendants the immediate examination of the book referred to in the presence of the examiner at his office for the verification of said account by inspection beyond that made by his

oath, and request that they immediately proceed to make such examination, and beyond that to make no further answer unless he elects to do so.)

A. I shall be pleased to have the privilege of showing the defendants' counsel in the presence of the examiner the book showing the account with John F. Pickrell concerning the iron contract, that they may, if they so choose, compare the same with the copy here submitted at my office, and I refuse to bring my book here.

H. R. BALTZER.

Subscribed and sworn to before me, this 25th October, 1879.

R. E. STILLWELL,
Examiner, &c.

291 EXHIBIT B. AND T., NO. 1.—R. E. S., *Ex'r.*

Exhibit B (a telegram).

19 RALEIGH, N. C., —— *24th*, 1869.

Received at St. Nicholas, February 24th.

Col. JOHN D. WHITFORD:

The injunction has really gone against us. We will now endeavor to fight it out in other line. We set work in S. C., on that end, and if we can get that we can put the iron there. Say to our friends now they must stand up to us. See my letters of yesterday and Monday. Would it not, after seeing them, be best for you to pay a visit to N. C.?

See my letters.

(Signed) W. J. HAWKINS.

75 D. H.—97.

292 EXHIBIT B. AND T., NO. 2.—R. E. S., *Ex'r.*

CHATHAM RAILROAD COMPANY, PRESIDENT'S OFFICE,
RALEIGH, N. C., *May 9th*, 1871.

Messrs. BALTZER & TAAKS, *Exchange Place, New York.*

DEAR SIR: Yours of May 1st to hand. I am afraid the arrangement I made to go to the Gulf will fall through. To carry it out gives us a first and second mortgage on ten miles of their railroad, which they did not contemplate when the arrangement was made. We are anxious for it and more especially as it will give us ten miles more road, which may be included in our first mortgage. The matter is now before the attorneys of both companies, who will decide, if, as they are afraid the arrangement will fail, and we will have to wait for further legislation, which we will get as soon as the Legislature meets in November next. We are progressing very well with our road and hope in July to make connection with the Fayetteville road. Then we will go ahead with the work and must have our bonds negotiated. We expect and hope to get your house to negotiate the loan for us, to furnish five (5) thousand tons of iron. At that time we desire to make an arrangement with you in regard to

other matters satisfactory to all parties. Col. Whitford will be our agent in New York, who will confer with you freely on the subject when you meet.

Yours, very truly,

W. J. HAWKINS, *President.*

(Endorsed:) Raleigh, May 9th. W. J. Hawkins.

293 EXHIBIT B. AND T., No. 3.—R. E. S., *Ex'r.*

CHATHAM RAILROAD COMPANY, PRESIDENT'S OFFICE,
RALEIGH, N. C., *June 8th*, 1871.

MESSRS. BALTZER & TAAKS, *Exchange Place, New York.*

GENTLEMEN: Yours of the 25th of May received a few days ago. I having been absent some eight or ten days from my office, then it was held for our directors' meeting which took place yesterday. It will take some little time to get up the information called for in your letter. A portion of the road between the Gulf and Wadesboro not yet located. We will have to approximate the cost. Our engineer, Col. Sandford, North, will be home last of next week, and then I will put him to work on the maps, &c. Hope to get matters in shape in time to meet you before your departure for Europe. We will not be able to do much before the meeting of the Legislature in November next. I am glad to be able to say to you that we expect to complete our road to the Fayetteville road by or before July 15th, some 44 miles from Raleigh, which will make connection with the town of Fayetteville and the coal fields. We will not need much iron before the spring of 1872. So far the business of the short, incomplete portion of our line has been able to pay current expenses. I have been expecting Col. Whitford to go North for some weeks, who could more fully explain our matters and tell you more about the country than I can in a short letter communicate.

Very truly yours,

W. J. HAWKINS,
President.

294 EXHIBIT B. AND T., No. 13.

(Bill in triplicate.)

NEW YORK, *Oct.* 12, 1868.

Mr. John F. Pickrell bought of Schepeler & Co. and of Baltzer & Taaks.

First delivery on contract, dated September 11, 1868, for 10,000 tons R. R. iron, on board ship J. H. Armstrong, bound for Portsmouth, Va.

Eber Vate. 3,477 bars railroad iron, Erie T pattern.

W'g To. 630.6.2.26 @ cr. $79.36 p. ton. Cr. $50,023.51.

Cash. *Specifications of Lengths.*

3,306 bars of	24′	To.	591	15	0	27
88	"	23′	"	15	1	1	27
65	"	22′	"	10	12	2	19
33	"	21′	"	5	2	3	17
25	"	20′	"	3	14	1	6
9	"	19′	"	1	5	2	4
13	"	18′	"	1	14	3	1
3	"	17′	"		7	2	17
5	"	16′	"		12	0	10
3,567 bars		To.	630	6	2	26

Contract quantity ..... to 10,000
Above delivery ..... " 630 6 2 26 first delivery.

Remain to 9,369 13 1 2 to be delivered.

Accepted.

295 EXHIBIT B. AND T., No. 14.

NEW YORK, *October 10th*, 1876.

Received from Mr. John F. Pickrell one hundred bonds of one thousand dollars each (nominal) 6 per cent. North Carolina State against iron per J. H. Armstrong, delivered to him on contract, dated 11th September last, for 10,000 tons iron, settlement to be made within a few days hence.

BALTZER & TAAKS.

296 EXHIBIT B. AND T., No. 15.

Dr. John F. Pickrell Esq., in account with Baltzer & Taaks.

1868.

Oct. 15.	To delivery of R. R. bars	$50,023	51
	Freight on do	1,260	68
	1 p. ct. insurance	5	15
	Balance	11,794	27
		$63,593	46
Oct. 15.	By $100,000 North Carolina b'ds	$63,593	46

297 EXHIBIT B. AND T., No. 16.

NEW YORK, *November 2d*, 1868.

Mr. John F. Pickrell, bought of Shepler & Co., and of Baltzer & Taaks.

Second delivery on contract, dated Sept. 11, 1868, for 10,000 tons of R. R. iron, ex. City of Montreal (Wetmore's yard).

Ebber Vate. 4,341 bars railroad iron, wh'g to. 776 1 3 *@* c'cy $79.36 per ton. C'cy $61,132.12.

Cash.

Specifications of Lengths.

4,129	bars of	24′	To.	737	1	2	27
17	"	23′	"	2	17	3	3
113	"	22′	"	18	12	0	27
15	"	21′	"	2	7	0	9
35	"	20′	"	5	4	3	0
3	"	19′	"		8	1	23
16	"	18′	"	2	2	3	25
13	"	16′	"	1	11	1	11
4,341	bars		To.	770	6	1	3

Contract quantity, To. 10,000

Above 1st delivery					To.	630	6	2	26
" 2d " "	1,400	13	0	1	"	770	6	1	3
Remain	To.	8,599	6	3	27	to be delivered.			

Accepted. Iron received.

298 EXHIBIT B. & T., No. 17.

NEW YORK, *November 2d*, 1868.

Mr. John F. Pickrell, bought of Schepeler & Co., and of Baltzer & Taaks.

Third delivery on contract, dated Sept. 11, 1868, for 10,000 tons R. R. iron for stores of Woodruff & Robinson, yard H, Congress street (Brooklyn).

1,859 bars of railroad iron, wh'g to. 330 16 0 15 @ c'cy $79.36-100 p. ton. C'cy $26,252.82.

Cash.

Specifications of Length.

1,602	bars of	24′	To.	289	8	2	18
197	"	22′	"	32	12	0	4
44	"	20′	"	6	12	0	17
16	"	18′	"	2	3	1	4
1,859	bars.		To.	330	16	0	15

Contract quantity, To. 10,000.

Above 1st delivery					To.	630	6	2	26
" 2d "					"	770	6	1	3
" 3d "	1,731	9	0	16	"	330	16	0	15
Remain	To.	8,268	10	3	12	to be delivered.			

Accepted. Iron received.

299 EXHIBIT B. AND T., No 18.

NEW YORK, *November* 2*d*, 1868.

Mr. John F. Pickrell, bought of Schepeler & Co. and of Baltzer & Taaks.

Fourth delivery on contract dated Sept. 11, 1868, for 10,000 tons R. R. iron in store of Woodruff & Robinson, yard H, Congress street (Brooklyn), 5,642 bars railroad iron.
Wh'g, To. 1,004 9 0 18 @ c'cy $79.36 p. ton ------ c'cy $79,713.79

Contract quantity To. 10,000.

Above 1st delivery				To.	630	6 2 26
"	2d	"		"	770	6 1 3
"	3d	"		"	330	16 0 15
"	4th	"	2,735.18.1.16	"	1004	9 0 18
Remain			To. 7,264. 1.2.22 to be delivered.			

Specifications of Lengths.

5438	bars of	24′
183	"	21′
21	"	18′
5642		To. 1,004 9 0 18 612

Accepted. Iron received.

300 EXHIBIT B. AND T., No. 19.

NEW YORK, *October* 30, 1868.

C. F. TIMPSON, Esq., *Cashier Continental National Bank, Present.*

DEAR SIR: Wm. J. Hawkins, Pres. Chatham R. R. Co., has deposited with you—Nos. 1,601 to 3,000, inclusive—fourteen hundred bonds issued by the State of North Carolina, for $1,000 each, with all coupons attached for interest from 1st October, 1868, which you will please keep in your vault, subject to our joint order, said bonds to be delivered only upon the joint order of the subscribers or their survivors and Wm. J. Hawkins or his successor. Coupons as they fall due shall be cut off by Wm. J. Hawkins or his successor, agent, or attorney, without the joint order of the other parties signed in duplicate.

WM. J. HAWKINS,
President Chatham R. R. Co.

BALTZER & TAAKS.
JOHN F. PICKRELL.
SCHEPELER & CO.

301 EXHIBIT B. AND T., No. 20.

NEW YORK, *Nov.* 2, 1868.

J. F. PICKRELL, *Present.*

DEAR SIR: We enclose bills of—

T. 770 6 1 3	$61,132 12
1,004 9 – 18	79,713 79
330 16 – 15	26,252 82
T. 2,105 11 2 8 R. R. iron	$167,098 73

which we are prepared and wish to deliver to you. We ask you, therefore, to make your arrangements in conformity with contract dated 11th Sept. last, and advise us accordingly.

Respectfully yours,

BALTZER & TAAKS.
SCHEPELER & CO.

302 EXHIBIT B. AND T., No. 21.

NEW YORK, *November* 2, 1868.

W. J. HAWKINS, Esq., *Present.*

DEAR SIR: We have to-day informed Mr. John F. Pickrell that upon contract dated Sept. 11 last we wish to deliver to him T. 2,105 11 2 8 R. R. iron, amounting to $167,098.73, bills of which have been placed in his possession, and we now ask you to have the necessary arrangements for payment of the above sum attended to.

Very respectfully yours,

BALTZER & TAAKS.
SCHEPELER & CO.

303 EXHIBIT B. AND T., No. 22.

NEW YORK, *Nov.* 20, 1868.

Mr. JOHN F. PICKRELL, *City.*

DEAR SIR: We have sold to-day $100 per North Carolina 6s bonds, at 64 ..... $64,000 00

1½ pr. ct. equalization of coupons	1,500 00	
1-10 P. M. tax	6 40	
		1,506 40
Producing		$62,493 40

which we apply to payment of account of bill for 2d, 3d, and 4th delivery of iron.

You will oblige us by settling balance at an early day.

Respectfully, your ob't servants,

BALTZER & TAAKS.

304 EXHIBIT B. AND T., No. 23.

NEW YORK, *Nov.* 21*st*, 1868.

Mr. J. F. PICKRELL, *City.*

DEAR SIR: We have sold to-day $50 M North Carolina 67, 63½ $31,750 00
1½ pr. ct. equalization of int. $7 50
1-10 P. M. tax 3 18
753 18

Producing to your credit $30,996 82

We remain, dear sir, yours respectfully,
BALTZER & TAAKS.

305 EXHIBIT B. AND T., No. 24.

(Bill in quadruplicate.)

NEW YORK, *February* 20*th*, 1869.

Mr. John F. Pickrell, bought of Schepeler & Co., and of Baltzer & Taaks.

Eighth delivery on contract dated September 11th, 1868, for 10,000 tons R. R. iron.

On board of Annie M. Cann, bound for Norfolk, Va.
4,859 bars railroad iron.
Whg. To. 879 7 0 3
at C'cy $79 36-100 per ton.
C'cy $69,785 29

Freight to Norfolk, Va., $1 50-100 per ton.
Gold. 1,319 25 @ 133 ..... 1,954 60

Cash. C'cy $71,539 88

Contract quantity, To. 10,000 — - —

1st delivery,		To.	630	6 2 26		
2d	"		770	6 1 3		
3d	"		330	16 0 15		
4th	"		1,004	9 0 18		
5th	"		405	17 0 4		
6th	"		1,075	10 3 21		
7th	" not yet received,		551	5 0 18		
8th	"		879	7 0 3		
					5,647	18 1 24

To be delivered, To. 4,352 01 2 04

Specifications of Lengths.

4,481 bars, 24 feet.
375 " 22 "
13 " 20 "
30 " 18 "

4,859 bars. Accepted. Iron received.

306 EXHIBIT B. & T, No. 25.

NEW YORK, *April* 21, 1869.

J. F. PICKRELL, Esq., *New York.*

DEAR SIR: Considering the difficulties you are laboring under since the late decision of the supreme court of the State of North Carolina, we will make no further demand or call on you for receiving iron under contract, dated 11th Sept., 1868, until you and your friends have succeeded in making the bonds of North Carolina, now on deposit in the Continental Bank as collateral security for said contract, marketable in the city, or until such time as the first-mortgage bonds of the Chatham R. R. Co., recently authorized by the Legislature of North Carolina, shall have been issued and negotiated to a sufficient extent, always provided you do now promptly pay for the iron ex Annie M. Cann, about 880 tons, now in Portsmouth, sold you at $73.25 low cash and expenses, with interest, against our delivery order on our agents in Norfolk, and that should we make any further sales of iron, as authorized by your letter dated 2d March, '69, we shall reduce quantity of iron contracted for to the extent of such sales.

Yours very truly, BALTZER & TAAKS.

307 EXHIBIT B. AND T., No. 26.

NEW YORK, *Aug.* 11, 1869.

J. F. PICKRELL, Esq., *New York.*

DEAR SIR: In reply to your note of this date, we beg to say, that in accordance with your letter addressed to us on the 2d of March last, as far as we are concerned, we release you from obligations of receiving any more iron under contract dated 11th Sept., 1868, and consider the same as closed.

We are, dear sir, respectfully yours,

BALTZER & TAAKS.

308 EXHIBIT B. AND T., No. 27.

OFFICE OF JOHN F. PICKRELL,
No. 60 WALL ST., P. O. BOX 5696,
NEW YORK, *Sept.* 21*st*, 1868.

DEAR SIR: Instead of "U. S. Trust Co." put Continental Bank as custodian of the bonds for iron contract.

Yours truly, JOHN F. PICKRELL.

Messrs. BALTZER & TAAKS.

309 EXHIBIT B. AND T. No. 28.

NEW YORK, *November* 12*th*, 1868.

Please make the insurance, say $50,000, on 630 tons iron, barque J. H. Armstrong, from New York to Portsmouth, Va. Please have the rate as low as possible, and a per cent. off in lieu of scrip.

Mr. Rosenplanter promised to have one bar of this cargo left with

the vessel's agent for us. This is important, as it is wanted for sample by which to buy the chairs. I hope, therefore, he will attend to it.

Yours, truly, JOHN F. PICKRELL.

310 EXHIBIT B. AND T. No. 29.

NEW YORK, *Nov.* 31, 1868.

DEAR SIR: Greenleaf, Norris & Co. will receive from you this morning 100 bds. new N. C.'s and hand you check, $75,000, for my acc't.

Yours, truly, JOHN F. PICKRELL.

Messrs. BALTZER & TAAKS,
50 *Exchange Place.*

311 EXHIBIT B. AND T. No. 31.

NEW YORK, *Sept.* 10, 1868.

DEAR SIR: Enclosed find ch. $166.67, 10s., 4, interest on $100,000 borrowed for acc. Chatham R. R.

Greenleaf, Norris & Co. will to-day return you $100,000, and receive from you the securities.

Yours, truly, J. F. PICKRELL,
For Chatham R. R. Co.

Messrs. BALTZER & TAAKS.

312 EXHIBIT B. AND T. No. 32.

OFFICE OF JOHN F. PICKRELL,
42 BROADWAY, P. O. BOX 5696,
NEW YORK, *August* 31*st*, 1869.

DEAR SIR: Yours of 26th inst., with order for 850 N. C. bonds, rec'd and noted. This closes finally my contract of 11 Sept., 1868, with yourselves and Messrs. Schepeler & Co.

Yours, truly, JOHN F. PICKRELL.

Messrs. BALTZER & TAAKS,
50 *Exchange Place.*

313 EXHIBIT B. AND T., No. 33.

NEW YORK, *Aug. 26th* 1869.

J. F. PICKRELL, Esq., Present.

DEAR SIR: Herewith please find order for eight hundred and fifty Chatham bonds on Continental National Bank, being remainder of those deposited there for security on iron contract dated 11 Sept., 1868, these bonds being released pursuant to the contract having been mutually declared closed. The order is signed by ourselves as well as Messrs. Schepeler & Company.

You will please acknowledge receipt, and believe us,

Yours, truly, (Sig.) BALTZER & TAAKS.

NEW YORK, *August 26th*, 1869.

The Continental National Bank will please deliver to bearer, on this our order, signed jointly with Messrs. Schepeler & Co., J. F. Pickrell, and J. Hawkins, pres., 850, say eight hundred and fifty, North Carolina State (Chatham R. R.) bonds, of $1,000 each, numbered from 1601 to 2451, both inclusive, deposited in its vault for safe-keeping.

Respectfully, (Sig.) BALTZER & TAAKS.
(Sig.) SCHEPELER & CO.

EXHIBIT B. & T., No. 34.

DR. *John F. Pickrell, New York, Iron Acc. with Baltzer & Taaks.* CR.

1868.				1868.			
Oct.	15.	To 1st delivery on contract (of Sept. 11th), 3,547 b. R. R. iron	$50,023 51	Oct.	15.	By rec'd from Greenleaf, Norris & Co. $100 M 6 pr. ct. North Carolina	$63,593 46
	"	" paid freight on 1st delivery	1,260 68	Nov.	21.	" rec'd from Greenleaf, Norris & Co. $100 M 6 pr. ct. North Carolina	75,000 00
	"	" 1 pr. ct. insurance on $51,500 to Portsmouth, Va.	515 00		21.	" rec'd from him $100,000 North Carolina	62,493 75
Nov.	2.	" paid him balance of acc.	11,794 27		23.	" sold $20,000 North Carolina	30,996 82
	21.	" 2d delivery on contract, 4,341 bars, w't 770.6.13	61,132 12				
	"	" 3d delivery on contract, 1,859 bars, w't 330.16.0.15	26,252 82				
	"	" 4th delivery on contract, 5,642 bars, w't 1,004.9.0.18	79,713 79				
	"	" 14 days' interest on same, caml. 1 day due him	442 73				
	23	" 2 days' interest on $30,047.71	11 67				
	"	" balance	937 44				
			$232,084 03				$232,084 03

315

1868.				1868.			
Dec.	28.	To paid him balance of acc't	$937 44	Nov.	23.	By balance	$937 44
1869.				1869.			
Feb.	1.	" " ins. on iron	232 40	April	12.	" rec'd from Greenleaf, Norris & Co. $25,000 6 pr. ct. North Carolina	13,092 39
April	9.	" " him	2,000 00	Sept.	6.	" ins. on iron, express charges, etc.	499 79
	14.	" " "	2,092 39				
	13.	" " express charges, telegrams, etc.	35 39				
	22.	" " him	3,000 00				
	26.	" " "	6,000 00				
May	4.	" " express ch'g's on coll. pr. Raleigh	232 00				
			$14,529 62				$14,529 62

316 EXHIBIT B. AND T., No. 35.

OFFICE, No. 50 EXCHANGE PLACE,
NEW YORK, *January 19th*, 1879.

Mr. John F. Pickrell to Baltzer & Taaks.

Terms cash.

1,000 6's North Carolina State bonds.
(Chatham R. R. issue.) 61½ net $6,150.
No. 299,113,000.

Paid.

317 United States Circuit Court for the Western District of North Carolina.

HERMAN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY, WILLIAM J. HAWKINS, JOHN D. WHITFORD, and JOHN F. PICKRELL.

Interrogatories to be administered to Alfred H. Timpson and Cornelius F. Timpson, witnesses to be examined upon the part of the complainants, by Richard E. Stillwell, Esq., as a special examiner, in the city of New York:

First interrogatory. What is your name, age, residence, and occupation?

Second interrogatory. Are you acquainted with the parties, plaintiff and defendant, in this suit, or any of them; and, if yea, please state which of them, and how long you have known them, respectively.

Third interrogatory. If, in answer to the first interrogatory, you have answered that you were an officer or employee of the Continental National Bank of the city of New York, please state whether you were so employed in the year 1868; and whether you have any, and, if any, what knowledge of any transactions between said bank and the defendants, or any of them, in relation to the deposit, sale, or use of any bonds of the State of North Carolina belonging to the Chatham Railroad Company, or the proceeds thereof?

Fourth interrogatory. In what particular name or style were such transactions, if any, had and conducted upon the books of said bank? Please give details and dates.

Final interrogatory. Do you know, or can you state, any other matter or thing of interest to either party above named; if yea, please state the same as fully as though you were specifically interrogated thereunto.

JOS. B. STEWART,
Sol. for Complainants.

318 RALEIGH, N. C., *Oct.* 28, 1879.

Col. J. B. STEWART, *New York.*

DEAR SIR: We return you herewith interrogatories without any cross.

Yours, respectfully, JOS. B. BATCHELOR AND
T. C. FULLER.

Deposition of ALFRED H. TIMPSON, taken upon interrogatories hereto annexed, pursuant to agreement between counsel for the respective parties. No cross-interrogatories being filed on the part of the defendants, they having waived the same, as shown by their letter addressed to counsel for complainants, dated October 28th, 1879, and which is hereto annexed.

FRIDAY, *November* 21*st*, 1879.

ALFRED H. TIMPSON, being duly sworn as a witness on the part of the complainants in the suit of Herman R. Baltzer and William G. Taaks, complainants, and The Raleigh & Augusta Air-Line R. R. Co., William J. Hawkins, John D. Whitford, and John F. Pickrell, defendants, deposes and says, in answer to the interrogatories hereto annexed:

To the first interrogatory he saith: My name is Alfred H. Timpson; my age is 41 years; I reside in New York city; my occupation is assistant cashier of the Continental Bank in the city of New York.

To the second interrogatory he saith: I know the firm of Baltzer & Taaks and John D. Whitford, one of the defendants.

To the third interrogatory he saith: I was employed by said Continental Bank in 1868, and I know said bank had financial dealings with John D. Whitford, agent; that, among other things, said Whitford, on or about the fourth day of December, 1868, deposited
319 in said bank about $380,000, as agent, and that he also had a separate account as agent for the Raleigh & Gaston Railroad Company about the same time, as shown by the books of said bank.

To the fourth interrogatory he said: My previous answer covers this question.

To the fifth interrogatory he saith: I know of nothing further that occurs to me.

ALFRED H. TIMPSON.

Subscribed and sworn to before me, this 25th November, 1879.

R. E. STILLWELL,
Special Examiner.

CORNELIUS F. TIMPSON, called as a witnes on the part of the complainants, to answer interrogatories hereto annexed and to him propounded, pursuant to an agreement between counsel, and being by me first duly sworn, he deposes and says, in answer to said interrogatories, as follows:

To the first interrogatory he saith: My name is Cornelius F. Timpson; age, 45 years; residence, New York city; occupation, banker; I was formerly cashier of the Continental Bank, in the city of New York, and was so in 1868.

To the second interrogatory he saith: I know Baltzer & Taaks, the complainants in this suit, and did know John D. Whitford and John F. Pickrell, two of the defendants; I know the Chatham Railroad Company, by name, as a corporation, and am informed that it is now known as the Raleigh & Augusta Air-Line Railroad Company.

To the third interrogatory he saith: While acting as cashier of said bank, it came to my knowledge that both Whitford and Pick-

rell had dealings with said bank during the year 1868, and more especially in the latter part of that year; that said dealings included the handling of bonds of the State of North Carolina in con-
320 nection with said railroad company, and deposits of money, in which said Whitford had the direction; the account for money dealings in the bank stood, I believe, in the name of John D. Whitford, agent.

To the fourth interrogatory he saith: My answer last given answers this question.

To the fifth interrogatory he saith: I know nothing further that occurs to me.

CORNELIUS F. TIMPSON.

Subscribed and sworn to before me, this 26th November, 1879.

R. E. STILWELL,
Special Examiner.

321 United States Circuit Court, Western District of North Carolina. In Equity.

HERMAN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY and others.

It appearing that the above-entitled suit in equity is pending and at issue in this court, and that the complainants have served notice on the defendants that they desire the evidence to be adduced in this cause "to be taken orally," as provided by rule sixty-seven (67) in equity procedure, and the depositions of witnesses residing in the eastern district of North Carolina are material and necessary to be used in the trial of the issues in the above-entitled suit, it is now, and hereby ordered, that Thomas R. Purnell, United States commissioner, residing at Raleigh, North Carolina, be, and is hereby, appointed a special examiner for this court to take the depositions of such witnesses as may be brought before him by either party, to be used in evidence in the trial of above-entitled suit, in manner and form as provided by rule sixty-seven of equity practice.

Done in chambers, this 16th day of July, 1879.

ROBT P. DICK, *Judge.*

UNITED STATES OF AMERICA, *Western District of North Carolina:*

I, John W. Payne, clerk of the United States circuit court for the above district, hereby certify that the foregoing writing is a true, correct, and complete copy of the original on file and remaining of record in my office at Greensboro, N. C.

In testimony whereof I hereunto set my hand and affix the seal of the circuit court, at my office in Greensboro, N. C., this 19th day of July, A. D. 1879.

[SEAL.] JOHN W. PAYNE, *Clerk.*

322 State of North Carolina, Western District of North Carolina, Circuit Court. April Term, 1879.

To Thos. R. Purnell, Greeting:

We, reposing special trust and confidence in your integrity, do authorize and empower you to cause to appear before you, at such time and place as you may appoint, and on oath to examine, touching all such matters and things as they shall know of, and concerning a certain matter of controversy in our United States circuit court for the western district of North Carolina, now pending, wherein Hermann R. Baltzer and Wm. G. Taaks are plaintiffs and The Raleigh and Augusta Air-Line Railroad Company *et al.* are defendants, and the deposition in writing by you so taken, the same to transmit, sealed with your seal, to our United States circuit court, to be held for the western district of North Carolina, on the first Monday in October next.

Witness John W. Payne, clerk of said court, at my office in Greensboro, 16th day of July, A. D. 1879.

[SEAL.] JOHN W. PAYNE. *Clerk.*

323 United States Circuit Court for the Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS
vs.
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

To the complainants, or their solicitors, C. M. McCloud, David Coleman, Jos. B. Stewart; and to the defendants, or their solicitors, Merriman, Fuller & Ashe, Jos. B. Batchelor:

You, and each of you, take notice that by an order made in the above-entitled cause on the 16th day of July, 1879, the undersigned was appointed a special examiner to take the depositions of witnesses to be read upon the trial of the said cause, orally, according to the sixty-seventh rule of equity practice; and that pursuant to said order I will proceed, at my office, in the city of Raleigh, N. C., to take the depositions of such witnesses as may be brought before me, on the 11th day of August, 1879, at ten o'clock in the forenoon, and shall continue from day to day, or with such adjournments as may be ordered until the commission is completed.

August 6th, 1879.

[SEAL.] THOMAS R. PURNELL,
Special Examiner and U. S. Commissioner.

324 *Depositions.*

UNITED STATES OF AMERICA, *Eastern District of North Carolina:*

In the Circuit Court of the United States for the Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS
vs.
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

Be it remembered that by virtue of a special order of the honora-

ble the circuit court for the western district of North Carolina, dated the 16th day of July, 1879, and a commission issued pursuant thereto on the same date, which said order and commission are herewith returned, the undersigned was duly appointed and commissioned a special examiner to take depositions in the above-entitled suit, orally, as provided in the sixty-seventh rule of equity practice. And that by virtue of said order and commission, and having been furnished by complainants with copies of the bill, answers, and pleadings in the said suit, the undersigned did, on the 6th day of August, 1879, issue and address a notice to the several parties complainants and defendants that he would, at his office, in the city of Raleigh, N. C., on the 11th day of August, 1879, proceed to take the depositions of witnesses, as and by said order and commission directed, which said notice is returned herewith.

And that on the said 11th day of August the said examination was adjourned from day to day, until the 25th day of August, 1879, when the complainants, by their solicitor, Joseph B. Stewart, and the defendants, The Raleigh & Augusta Air-Line Railroad Company, The Raleigh & Gaston Railroad Company, Wm. J. Hawkins and John D. Whitford, by their solicitor, Thomas C. Fuller, appeared before the undersigned, no one appearing for the defendant John F. Pickerell, he having given notice that he would appear in his own behalf, and the United States writ of subpœna having
325 been issued and served upon William W. Vass as a witness upon the part of the complainant, then and there appeared before the undersigned, who, being by me duly sworn, deposed and testified as follows, to wit:

William W. Vass, a witness, being examined by Joseph B. Stewart on the part of the complainants, in answer to the question propounded, testified as follows:

Q. 1. Please state your name, age, residence, and occupation?

A. My name is William W. Vass; age fifty-eight years; residence, Raleigh, N. C.; occupation, secretary and treasurer of the Ralegh & Gaston Railroad Company, and of the Raleigh & Augusta Air-Line Railroad Company.

By agreement of the solicitors for the complainant and defendants, the further examination of witnesses in this cause in adjourned until Tuesday, the 2d day of September, 1879, at 10 o'clock in the forenoon.

THOMAS R. PURNELL,
Special Examiner.

Tuesday, *Sept. 2d*, 1879—10 o'clock a. m.

Met pursuant to adjournment.

Present: Jos. B. Stewart, of counsel for the complainants, and Joseph B. Batchelor and T. C. Fuller, counsel for the defendants, the Raleigh & Augusta Air-Line Railroad Company, the Raleigh & Gaston Railroad Company, William J. Hawkins, and John D. Whitford.

Q. 2. As such secretary and treasurer, as stated in the preceding answer, you are identified with and personally interested in the corporation defendants in this suit; is or is not that so?

A. Yes.

Q. 3. Please state, to the best of your recollection, when you became so identified with said companies, and in their respective order as to time; you need not give the exact dates, but approximate it?

326 A. With the Raleigh & Gaston railroad about thirty-five years, and with the Chatham railroad, now the Raleigh & Augusta Railroad Company, since its organization, about 1861.

Q. 4. As such secretary and treasurer of such companies, will you please be so good as to state the precise duties imposed upon and performed by you in those and respective capacities; please state first your duties as secretary, and then your duties as treasurer?

A. As secretary, I would notify the directors of the meetings of the board when called by the president, and at such meetings it is my duty to attend and record the acts of such meetings of directors; as treasurer I receive, and, under the direction of the president, disburse the funds of the company.

Q. 5. Besides the duties as secretary, did it, or did it not, devolve upon you to conduct, receive, and preserve the correspondence of and in the name of the company in reference to its business transactions?

A. It did not.

Q. 6. Upon whom did such duty devolve, and by whom was it performed?

A. Such duty would devolve upon the president, and was always performed by him.

Q. 7. Was there, or was there not, an official and corporate letter book kept by said companies in which letters and communications affecting their corporate business were recorded and preserved?

A. There was not up to that time, to wit, 1872, any official letter book kept in my department.

Q. 8. Has such official letter book been kept since 1872?

A. I recollect that I have kept a letter book since about 1874, in which I have taken a press copy of all my official letters.

Q. 9. Previous to 1872 in what manner was kept and preserved the business transactions of said companies?

A. The books, documents and valuables would remain in the safe of the company under the charge of the treasurer.

327 Q. 10. Are such books and documents still kept in the same way as stated in your preceding answer?

A. Yes.

Q. 11. Did, or did not, the books and papers so kept by you as such treasurer in reference to the business transactions of the said companies embrace all matters of contract and purchases or supplies furnished to and work done on said railroads in the construction and equipping thereof?

A. Not at all, except as included in vouchers for payments made.

Q. 12. You have spoken of the Raleigh & Gaston Railroad Company and the Chatham Railroad Company, the former organized about or previous to 1845, and the latter about 1861; will you please state the exact relations, if any, to the best of your knowledge or recollection, the said two companies had and have the one with the other, and especially as to stockholders, officers, and managers.

A. They are each separate and independent corporations; the Raleigh & Gaston Railroad Company is interested in the prosperity and extension of the Raleigh & Augusta Air-Line Railroad Company (or the Chatham Railroad Company).

Q. 13. Have, or have not, the said companies got the same officers and directors, and to a great extent the same stockholders?

A. At present they have the same general officers, including the same board of directors, but the stockholders are different.

Q. 14. When was the Chatham railroad first put under contract, and who was the contractor or the contractors?

A. Soon after its organization, 1861, the work was commenced and carried on during the war by the company.

Q. 15. What amount of work was thus done by the company in the construction of its road previous to September, 1868?

A. It is impossible for me to say.

Q. 16. Are you not able to say how far the said road had been graded, to what extent cross ties and iron, if any, had been placed upon the same?

328 A. I am not able to state, and was never upon the road previous to 1868, according to my recollection.

Q. 17. Were you or were you not on said road in the year 1868; and, if yea, please state what time in the year 1868.

A. I never was upon the road for inspecting purposes, and my best recollection now is, that my first trip on the road was to accompany an excursion after the completion of the first section, about 1870.

Q. 18. What constitutes the first section of said Chatham road, as expressed in your preceding answer?

A. From Raleigh to Haw river.

Q. 19. What distance is that?

A. About thirty miles.

Q. 20. And you were never over the line of said road while it was being constructed, until after said section of about thirty miles was completed; is that so, to the best of your recollection?

A. It is.

Q. 21. You have no personal knowledge, therefore, of who did the actual work on said road, between Raleigh and Haw River?

A. Of course not, for the reasons stated.

Q. 22. Do you or do you not know a man named John F. Pickrell?

A. Yes.

Q. 23. When and where did you first make his personal acquaintance?

A. In Raleigh, after he became a contractor of the first section.

Q. 24. How long after he became a contractor of the first section?

A. It was before he completed the contract of the first section.

Q. 25. Will you, now, be so good as to state when, where, and in what manner, you first met said Pickrell, as such contractor for said first section of said road?

329 A. He was in the city staying several days, and came down to the railroad office—dropped in my room only for a minute or two.

Q. 26. When and where did you next see said Pickrell?

A. I am not certain of having met him afterwards, before I met him in Greensboro, about a year ago.

Q. 27. You never saw said Pickrell again after his momentary call at your office during the construction of said first section of said road; is, or is not, that so?

A. That accords with my recollection.

Q. 28. Was or was not the said Pickrell at your office on or about the first day of December, 1868, and was or was not that the only time you ever saw him until you met him in Greensboro, about the month of October or November, 1878?

A. He was at my office at the time I have already designated, and I have no recollection of having seen him afterwards until I met — in Greensboro.

Q. 29. You have spoken of said Pickrell's contract to construct the said first section of the Chatham railroad; was that contract in writing; and, if yea, have you the same in your possession, and will you please produce the same as part of your examination?

A. The contract with Pickrell & Company was in writing, and I here produce the original contract, and make a copy thereof a part of my testimony, marked V., No. 1.

The witness, in response to the question, having stated that he was in possession as treasurer and official custodian of all contracts and papers of the Chatham Railroad Company in the preceding part of his examination, is called upon by the last question to produce the original contract of John F. Pickrell for the construction of the first section of the Chatham railroad; that is, the portion of its road from Raleigh to Haw river, which he said he had in his possession, and would produce the same as the contract of John F. Pickrell & Co., and would make a copy thereof a part of his testimony; and in proceeding to produce the same finds that it is not in his personal possession as he stated, but that it is in the personal

330 possession of the counsel of the defendants now present, and therefore cannot complete his answer by the production thereof; wherefore the counsel for the complainants, renewing his question, asks the witness to be so good as to produce a copy of the said contract.

The counsel for the defendants, as above, while they protest that the complainants have not the right to require the production of the said paper by the defendants, state that the defendants will, when properly demanded of them, produce the said contract as an original, and also furnish a copy of the same; yet they will not permit this witness to produce said original contract or furnish any copy thereof, as they are advised by their clients that said contract is not and has not been in the custody or under the control of this witness.

The counsel for the complainant refers the examiner to the fact that the witness having testified that he, as treasurer of said company, was the official custodian of all such papers, and having testified that he as such officer of said company was in possession of the particular paper called for in the question—that is, the original contract of John F. Pickrell with the Chatham Railroad Company for building the first section of its road—was properly and legally called upon to produce the same, and protests against the said company, through their counsel, interfering with the witness producing said contract as tendered in his answer to the twenty-ninth question.

Q. 30. When and where did you last see and have in your possession the said original contract between said John F. Pickrell and said Chatham Railroad Company for building the said first section of its road as stated in your answer to the twenty-ninth question, and to whom did you deliver the same, if any one, and when and where?

A. I had said contract in my possession at the meeting of the board of directors held for the purpose of considering and ratifying the same; retained it until making an official copy in the books of the proceedings of the board of directors, and then returned said document, about 1868 or 1869, to the custody and control of the president of the company.

331 Q. 31. Your answer last given evades my question, which was based upon your answer to the 29th question, wherein you stated that you had said original paper in your possession now present, and would produce the same, and make a copy thereof part of your answer, marked V., No. 1; I will now ask you to state when you made the copy you have sworn you made, and to whom, and when you delivered the original, after making said copy, which you made part of your answer to said 29th question. I do not at present inquire about what took place in 1868 or 1869, but what took place to-day, and since you have been subpœnaed as a witness in this cause.

A. I intended to say that I would produce a copy of said original with Pickrell & Co. as said contract was recorded by me in the book of the proceedings of the board of directors; said contract with Pickrell & Co., after being ratified at the meeting of directors, was soon entered upon record by me, and afterwards called for and received by the president of the company.

Q. 32. Who was the president of the company who called for said Pickrell & Co. contract, and to whom you delivered it, as you now say, some eight or ten years ago?

A. William J. Hawkins.

Q. 33. Is it the same William J. Hawkins who is a defendant to this suit?

A. If this suit is against William J. Hawkins, it is he.

Q. 34. Have you or have you not had said original Pickrell contract in your possession, as the official custodian thereof, since you have been subpœnaed and sworn as a witness in this cause, and did you not make a copy thereof; and, if yea, to whom did you deliver the said original contract, and when, and where is said copy?

A. I have not had the original contract. The copy spoken of by me I made this morning from the directors' book, which I know is a copy of the original.

Q. 35. When did you last see the said original contract?

A. I do not know that I have seen the said original contract since about the time I, as secretary, recorded it.

332 Q. 36. Will you now please look at the copy of the bill of complaint filed in this cause, at Exhibit "D," page 38, at a paper which reads "Agreement between the Chatham Railroad Company and John F. Pickrell & Co., of New York, made in pursuance of preliminary contract dated September 1st, 1858, this March 6th, 1869," &c., and signed "In testimony whereof, the said parties have hereto affixed their signatures," and signed "W. J. Hawkins, pres't C. R. R. Co., John F. Pickrell & Co.; witness, Kemp P. Battle, John D. Whitford," and state whether or not, to the best of your knowledge and recollection, the said Exhibit "D" is or is not a true and correct copy of the said original, which you say you delivered to W J. Hawkins, as president of said company?

A. I cannot answer until I consult my record books.

Q. 37. You have stated that you made a copy of said contract from your official record in your possession only this morning; then why is it necessary that you should refer again to said record to be able to answer whether, according to your best recollection, the said Exhibit "D," now shown you, is or is not a true or substantial copy of the said contract which you so recently copied?

A. The copy taken and referred to by me, if I was allowed to refer to it, would enable me to answer understandingly, but I decline to answer otherwise.

Q. 38. Are you the same W. W. Vass who, as secretary and treasurer, verified the answer of said Chatham Railroad Company, now shown you, on the eleventh day of January, 1879?

A. I am.

Q. 39. In section XXIX of said answer, which you so verified, occurs, among others, the following sentence: "The contract with said Pickrell & Co. was therefore modified, and the written contract, a copy of which, marked 'Exhibit D,' and filed with plaintiffs' bill, was thereupon executed by the said parties, to wit, John F. Pickrell & Co., by its president;" did you so verify said answer mak-

333 ing said "Exhibit D" a part thereof, without knowing whether the same was or was not a correct copy?

A. The printed copy of the answer of the Chatham Railroad Company now produced, if a correct copy of the original and certified to by me, I believe to correct.

Q. 40. This paper, among others, purports to bear the signature of John F. Pickrell & Co.; did you ever personally know any such firm; and, if yea, state from and within your own personal knowledge the names of each member or person composing said firm, and where he or they resided on the said sixth day of March, 1869?

A. I never had any personal acquaintance with said firm, having but slight acquaintance with John F. Pickrell, having never met any other member of the firm.

Q. 41. Do you state that the Chatham Railroad Company executed so important a contract as shown by said "Exhibit D" for the building of thirty miles of its road, and the disbursement and payment of six hundred and eleven thousand dollars of its money, without knowing the names of the individuals of the firm who were to perform this work and receive this large amount of money?

A. I make no such statement; only say that I, as secretary, had no personal acquaintance with the other members composing the firm of John F. Pickrell & Co.

Q. 42. But you have sworn that you, as treasurer of the company, paid all vouchers for work done on said section and necessarily paid the said firm; will you now please state, to the best of your recollection and knowledge, what individual, person, or member of said firm produced to you such vouchers for such work done on said road, and to what individual or person you paid the same; please give his or their full name and residence to the best of your recollection.

A. While as treasurer I am the general disbursing officer of the road, yet, in the settlement with J. F. Pickrell & Co., contractors, they received, as I recollect, the larger proportion of the
334 amount due them as contractors from the proceeds of company's State bonds placed in the hands for sale under the contract by W. J. Hawkins, president and agent of the Chatham Railroad Company.

W. W. VASS.

Q. 43. Was the mode of payment made to Pickrell & Co. different to what was usual with other contractors for work done on said Chatham road; and, if yea, why was it different?

A. Pickrell & Co. were the sole contractors of the entire section, and in the contract entered into with them they expressly agreed to take State bonds held by the Chatham Railroad Company at a fixed rate of value.

Q. 44 What was that rate?

A. About sixty cents on the dollar, I believe.

Q. 45. How, when, and in what manner was such payment made, and by whom?

A. W. J. Hawkins, as president and agent of the company, negotiated all the bond transactions had with Pickrell & Co., and settled the same with them; after such settlement the said Hawkins made a report of such sales and settlement to the board of directors, which was approved by the directors, and in said account, as well as I remember rendered by Pickrell & Co., they were charged with the amount retained by them.

Q. 46. Were the bonds issued by the State of North Carolina placed in the hads of Pickrell & Co. before the work was commenced or completed?

A. Such bonds never came into my possession at all, but properly went into the hands of said president and agent, and were negotiated by him; of the particular circumstances, and when and how, I have no knowledge.

Q. 47. You have stated that said Hawkins, as said president and agent, made a report to the company of the negotiation and sale of said bonds by and through said Pickrell & Co.: was said report in writing; and if yea, will you please produce a copy thereof, as part of your answer?

335 A. I think there was no written formal report, but an exhibit of the condition of the accounts between Pickrell & Co. and the company.

Q. 48. Were or were not said accounts stated in writing, as you now state; and if yea, will you please produce the same, or a copy thereof as a part of your answer?

A. The principal account exhibited by said W. J. Hawkins was an account current between J. F. Pickrell & Co. and the Chatham Railroad Company, duly signed by said J. F. Pickrell & Co.

Q. 49. It was the duty of J. F. Pickrell & Co. to dispose of the said State bonds belonging to the said Chatham Railroad Company, in the market, as well as to build the road of said company as contractors; is that so?

A. By a condition of the contract with the said J. F. Pickrell & Co. they were obliged to receive bonds at a certain value in payment of the contract work.

Q. 50. You say that there was a condition of the contract with Pickrell & Co., that they should receive said State bonds for their work on the road, at a given price; will you please refer to said contract and point out the provision requiring them to accept said State bonds for their work, in the manner stated in your preceding answer?

A. I have not access to the original contract, nor at present to the official copy of the same, but believe that in said contract Pickrell & Co. agreed to accept bonds of the State of North Carolina in payment of the contract, at sixty per cent.

Q. 51. In giving your last answer you referred to "Exhibit D" of complainants' bill dated March 6th, 1869, as made a part of the answer of the Chatham Railroad Company thereto; will you please state whether said contract "Exhibit D" is the one to which you refer to as requiring said Pickrell & Co. to take said State bonds at sixty cents in the dollar, for their work on said road?

(Objected to by defendants' counsel because it states as a fact
336 that in his last answer witness referred to "Exhibit D," whereas, in truth, no such reference was made in said answer, as fully appears in said answer as recorded.)

Plaintiffs' counsel states that the question asked the witness to refer to the contract containing the agreement requiring Pickrell & Co. to take said State bonds at sixty cents in the dollar, for their work on the Chatham Railroad, and at the same time requested the examiner to furnish the witness with a copy of the bill containing the "Exhibit D," about which the witness had previously testified, which the witness did, and after examining said contract covered by folio 112, gave his answer therefrom, without mentioning the paper by its title, in consequence of which complainants' counsel propounded the last question, No. 51, for the express purpose of

identifying the contract referred to by the witness, and desires that the same be answered.

A. My answer to question No. 50 was based upon my distinct recollection of the facts stated by me, and was confirmed by reference to "Exhibit D" of complainants' bill.

Q. 52. You have spoken of an account current being presented by said Hawkins between said W. J. Hawkins, presidenat nd agent of said Chatham Railroad Company, and John F. Pickrell & Company, for and on account of work done by said Pickrell & Company on said Chatham road, and bonds received by them at sixty cents in the dollar in payment thereof; will you please produce said account current as part of your answer to this question?

A. The account current referred to, as I recollect, did not state the amount of work done under the contract, but was a financial exhibt of the sales of bonds and of the application of the proceeds.

Q. 53. By whom were such sales made, and for whose account?

A. The sales were made by Pickrell & Co., and for account of W. J. Hawkins, president and agent of the Chatham Railroad Company.

Q. 54. I now ask you to state, as secretary and treasurer of the said Chatham Railroad Company during the time of the
337 construction of its road, or at any other time, if there ever was a construction account or books of said company in the name of John F. Pickrell & Co. as contractors upon the road of said company, at any time or in any manner: and if yea, will you please produce said account as a part of your answer?

A. The account with J. F. Pickrell & Co., as contractors, was raised upon the books of the Chatham Railroad Company, and was regularly kept until closed, as the same appears upon the books of the company; I cannot produce it, as the books are not under my control.

Q. 55. Under whose control are books containing said account?

A. The books being the books of the company I am not allowed to take them off.

Q. 56. I am aware the books are the property of the company, but are they not in your official custody and control, as the secretary and treasurer of the same?

A. They are not.

Q. 57. In whose official possession and under whose control are they?

A. In that of the president and board of directors of said company.

Q. 58. Of what books, then, if any, do you have charge of as secretary and treasurer of said company?

A. None, so far as disposing of them.

Q. 59. No one asked you to dispose of any books or property of said company, but you were requested, and are again requested to produce an account current, which you have testified was kept upon said books, between said company and said Pickrell & Co., as contractors, for building its road in the shape of what is ordinarily

known as a construction account. Will you please produce and furnish such account?

A. I have said nothing about the account current in connection with the statement last made, that the Chatham Railroad Company has upon its books a regular account against J. F. Pickrell & Company, as contractors; the said books, when presented, will
338 show said account, but I have no authority and cannot produce the books, being advised that they are not under my charge.

Q. 60. For the purposes of this question I have requested you to produce the account for the construction of this road by Pickrell & Co., which you stated appeared on said books, which will, of course, be done by a copy therefrom, and I now ask you to be so good to state who advised you not to produce the copy.

(Objected to, by defendants' counsel, because the witness has not stated that any one advised him not to produce said books or copies therefrom, but has distinctly stated that he is advised that he has no authority to produce said books or furnish any copy therefrom without the order of the president and directors of the company, who alone have the custody and control thereof.)

A. No one so advised; but I could not introduce the books or copies therefrom without the express order of the president and the board of directors.

Q. 61. Who advised you that you had no authority to present a copy of the account current kept therein, between John F. Pickrell & Co. and said Chatham Railroad Company for the construction of its road?

A. I have been advised over and again by the president and board of directors in session as to what was my duty in this regard, and charged never to deliver the books of the company or copies therefrom without first getting permission from the president and board of directors.

Q. 62. You state, then, that the Chatham Railroad Company, as defendant to this suit, has instructed you as to what you shall or shall not give in evidence in this cause when testifying as a witness on the part of the complainants?

(Objected to, by counsel for defendant, because the fact set forth in this question is not supported by the record, because the question is calculated to entrap the witness, and is manifestly unfair to him.)

The counsel for complainant states that his question is
339 strictly founded upon and justified by the answer of the witness last given, wherein he has stated he has received just such instructions from the president and directors of the defendant company as are covered by the question last asked, and protests against the counsel for the defendants making argumentative objections thereto which are calculated to give direction to the answer of the witness.

A. I have made no such statement; I have received no such special instructions in this case; my convictions of duty in the prem-

ises arise from thirty years' experience as secretary and treasurer of railroads.

Q. 63. In your answer to question 61, above given, you use this language: "I have been advised over and again by the president and directors in session as to what was my duty in this regard, and charged never to deliver the books of the company, or copies therefrom, without first getting permission from the president and board of directors," which answer you so gave for not producing a copy of the account current between Pickrell & Co. and said railroad company, which you had introduced in your previous answers, and stated to exist; why did you introduce the existence of such account, if you did not intend to produce it, and why did you set forth the instructions imposed upon you by said Chatham Railroad company, if you did not mean it as a reason for not producing said account, so made part of your testimony?

A. The question seeks to confound by the use of terms to matters and things wholly different, and distinctly and separately referred to by me; my first reference was to the account current between W. J. Hawkins, president and agent of the Chatham Railroad Company, with J. F. Pickrell & Co., making a financial exhibit, and I afterwards stated, in reply, that said company did have upon its books a regular account against J. F. Pickrell & Co., contractors.

Q. 64. I will now ask you to produce the account current between said Chatham Railroad Company and John F. Pickrell & Co., contractors, first referred to as above set forth.

A. I have not said account in my possession.

340 Q. 65. I will now ask you to be so good as to look at the papers now shown you, and made part of this question, marked generally "Exhibit V No. 2," and described respectively as "schedules A, B, C, D, and E," and described "schedule A;" "The Chatham Railroad Company in account with John F. Pickrell & Co.;" "B," "The Chatham Railroad Company in account with John D. Whitford, agent;" "C," "John F. Pickrell in account with William J. Hawkins, president and agent Chatham Railroad Company," and "D," "John D. Whitford, agent, in account with W. J. Hawkins, president Chatham Railroad Company," and "E," "Chatham Railroad in account with John F. Pickrell," and state whether or not, to the best of your recollection, knowledge, and belief, the said five schedules, either or any of them, are correct or substantial copies of the said account which you have testified, appears on the books of said company, between it and said John F. Pickrell & Co., or said John F. Pickrell, and whether or not they are the same produced by said Hawkins to the board of directors of said company, as testified by you in your previous answers.

A. I am satisfied that I never saw before schedules A, B, and E, but am of the impression that schedule C is a pretty near copy of the account current, referred to as having been presented by Doctor William J. Hawkins as president and agent of said company, being headed:

"Dr. J. F. Pickrell in account with W. J. Hawkins, president and agent Chatham Railroad Company. Signed, J. F. Pickrell & Co., New

York, June 23d and 24th, 1869," discovering as I now do, on examination of said schedule C, that J. F. Pickrell is printed on this paper, whereas it is J. F. Pickrell & Co.: I think in the account current, submitted by W. J. Hawkins, president, as stated heretofore; I think I have also seen schedule D, headed Dr., John D. Whitford, agent, in account with W. J. Hawkins, president Chatham Railroad Company; signed J. D. Whitford, agent, New York, June 23d, 1869."

Q. 66. Did you, or did you not yourself, and in your own handwriting, prepare at the request of said Hawkins, each
341 of said schedules or accounts, to wit: A, B, C, and D, to be sent to and signed by John F. Pickrell & Co., in the precise form and substance as now presented by said four schedules made part of the preceding question, described as A, B, C, and D?

A. I never prepared any paper of any kind in the nature of an account for him to sign, having at that time no connection or correspondence with said Pickrell & Co., or with said Whitford, but I may have, although I do not now recollect it, at the request of the president, made copies for him.

Q. 67. Were there or were there not accounts current prepared by Pickrell & Whitford, under date of June 23, 1869, to the company which were substituted by the accounts now shown you by the request of the president, in a letter written, dated, and addressed as follows:

"CHATHAM RAILROAD COMPANY,
"PRESIDENT'S OFFICE,
"RALEIGH, N. C., *February 8th*, 1870.

"JOHN F. PICKRELL, Esq.

"DEAR COLONEL: Upon examination of returns made by you and Col. W. in here last, I find they do not conform to our manner of keeping our accounts, not having been stated as fully as we would like to have them, and in that form. I send you enclosed form acceptable to us not at all varying your account, which you will please make out as of that date, and let us have it as soon as we can get it. We may be called upon by a committee soon to make our exhibit, and would like to have it in ship-shape.

"I send you also reports to be signed by you for amounts paid by our treasurer account of your contract. I have within this enclosed letter for Col. Whitford. Please to attend to this at once, and greatly oblige,

"Yours, truly, WILLIAM J. HAWKINS."

and state whether or not this refreshes your memory and causes you to recollect anything more about the copying of said accounts at the request of said Hawkins.

342 A. My knowledge of these accounts currents was first derived from their presentation by the president to the board, and the conversation of the president and board thereon, and I had nothing more to do with them as treasurer, and they were not in my possession during this time until they became the proper basis for

settling the account between the company, and W. J. Hawkins, president and agent, and the company.

Q. 68. Will you please look at Legislative Document No. 33, session 1869–70, of the Legislature of North Carolina, page No. 128, and examine the account stated, a copy of which is made part of this question, marked V No. 3, headed "Statement of the Chatham Railroad Company, showing the amount received from sale of bonds of the State of North Carolina, and how applied, and signed W. W. Vass, treasurer," and state whethere or not this said exhibit was prepared by you.

A. It was.

Q. 69. I now ask you to please look again at said document and read from page 124 to 127, being part of a document headed, at page 1: "Document No. 33, Session 1869–70. Report of the Senate Investigating Committee," signed "Thos. Bragg, S. P. Phillips;" and at 124, headed "Chatham Railroad Company, Examination of William J. Hawkins, who says," &c., and signed, at page 127, "W. J. Hawkins, sworn and subscribed before the commissioners, Thos. Bragg, chairman," a copy of which is made part of this question, marked "Complainants' Exhibit V, No. 4," and state whether or not the said statement so prepared and made by you is the one referred to and made a part of the examination of said Hawkins?

(Defendants object to this question, and to any answer that may be made thereto, and hereby notify complainants and their counsel that when this deposition is opened to be passed upon, they will move to strike said question and answer, and the documents referred to, from said deposition, for reasons then and there to be assigned.)

343 A. I expect it is.

Q. 70. Will you now be so good as to look again at said document at page 124, at question 2, as follows: "Ques. 2. To whom were said bonds sold, by whom, when, and at what price, and the amount of such sale?" Answer. "On the 21st December, 1868, sold by J. F. Pickrell & Co. 387 bonds at 63, netting $238,005; at same time or about J. F. Pickrell took 1,000 at 60, amounting to $600,000; one hundred sold to General Littlefield at 60, and his draft for the amount was accepted by J. F. Pickrell & Co.," and then look at said account, Exhibit V. 2, Schedule A, on the credit side, and state whether or not the answer of said Hawkins to question No. 2, and the credit side of said account, Schedule A, are not identically the same as to transaction and amount.

(This question and the answer that may be given thereto, with the exhibit, subject to the same objections and notice as made and given to question No. 69.)

A. I have compared them, and they seem to agree.

W. W. VASS.

Adjourned to meet at ten o'clock a. m. on Wednesday, September 3d, 1879.

T. R. PURNELL,
Special Examiner.

WEDNESDAY, *September 3d*, 1879.

Met persuant to adjournment at 10 a. m.

Present: Jos. B. Stewart, of counsel for the complainants, and Thomas C. Fuller and Jos. B. Batchelor, counsel for defendants, as before stated.

The witness, W. W. VASS, at his own request, is permitted to answer more fully question No. 65, as follows:

Answer. Since making answer to question No. 65 the plaintiffs' counsel has submitted to me the statements under Schedules A, B, C, D, and E for examination, and for the purpose of refreshing my memory in regard thereto, and I have now to modify the answer already given, and to say that I now believe neither one of
344 the statements aforesaid is correct as compared with the original statement of Pickrell & Co., as submitted by W. J. Hawkins, president and agent to the board of directors of the Chatham Railroad Company, and which said original statement of Pickrell & Co. I believe to be now in the possession of the company and under control of the company's attorneys.

Q. 71. In which one of said Schedules A, B, C, D, and E do you find the difference, and please state what is the character of that difference?

A. I decline to explain from memory, but could show the discrepancy if the original was presented.

Q. 72 Where are the papers with which you made the comparison and from which you derive a knowledge of any discrepancy, as stated by you, since your adjourned examination?

A. I have made no comparison with the original statement of Pickrell & Co., the same having passed out of my control for years past, but I have by examination of the several schedules submitted to me by plaintiffs' counsel for the purpose refreshed my recollection of said statement.

Q. 73. I did not ask you for the original statement to which you refer, but I did ask you and again ask you to state with what record, document, account, or memorandum you compared, if any, the said Schedules A, B, C, D, and E, and by which comparison, if any, you arrived at the knowledge of a discrepancy or difference between the said schedules and the record or memoranda to which you referred, if any?

A. I have made no such comparison, and, so far as I know, no such papers as are embraced in said Schedules A, B, C, D, and E have ever been submitted to the company by Pickrell & Co.

Q. 74. As you now state you have made no comparison with any document or record, and have not seen or examined any since your adjourned examination, but state that such discrepancies and differences do exist because of matters brought to your memory by the examination of said schedules, I now ask you to be so good as
345 to exercise that same memory and state therefrom precisely what the differences are of any matters appearing upon the face of said schedules, and the facts as they exist in your memory, upon which you founded your modified answer to question No. 65.

A. I have no recollection of but one statement of account between Pickrell & Co. and W. J. Hawkins, president and agent of the Chatham Railroad Company, being rendered to the board of directors, which said statement was a financial exhibit up to the date of said statement, and thus became one of the valuable documents of the Chatham Railroad Company; the printed slips or statements referred to under Schedules A, B, C, D, and E purport to state the private account of J. F. Pickrell with said railroad company, whereas the said railroad company has never had, so far as I know, any transactions with J. F. Pickrell alone; there are other documents of which I never heard before, according to my recollection.

Q. 75. Your modified answer, then, to question No. 65 is based more upon what you do not know or remember than what you do know or remember; is that so?

A. By no means; and I respectfully protest against counsel for the plaintiffs, by any phraseology of questions propounded, to indicate any interpretations of the words of my answer not sustained by the plain meaning of such words.

Q. 76. The object of the question last propounded is not to interpret your preceding answer, but to request you, by affording you an opportunity to interpret it yourself, by stating whether your modified answer to question 65 is founded upon matters within your knowledge, derived from the inspection of Schedules A, B, C, D, and E, or because of things that you failed to remember apparent upon the face of said schedules after your inspection thereof.

A. It is impossible for me to know how much I have forgotten; but in respect to the statements above referred to, I have already stated in my modified answer that there were never presented to the board of directors of the Chatham Railroad Company, and I
346 can only refer to the original statement of J. F. Pickrell & Co., now in possession of the attorney of said company, as showing the discrepancies.

Q. 77. It is not what you have forgotten, but what you remember, that I wish to have you state in reference to the dealings of J. F. Pickrell & Co. with the Chatham Railroad Company; and now to seek to arrive at your knowledge in another way I will ask you this question: You have spoken repeatedly of an account current or a financial exhibit of the dealings of J. F. Pickrell & Co. with the Chatham Railroad Company, or with William J. Hawkins, agent and president of said company; will you now please state positively and distinctly whether J. F. Pickrell & Co., or any member of said firm, or any agent of said firm, if any such firm ever existed, or at any time appeared before your board of directors and presented the account to which you have referred, or any other account, or whether your board of directors ever dealt with or recognized the existence of any such firm as J. F. Pickrell & Co. for any business, or for any financial purpose whatever; and, if yea, please state fully and to the best of your knowledge and recollection the facts as [to] the matters so inquired about.

A. I have no knowledge that any member or agent of Pickrell & Co. having ever been present before the board of directors, but the

company have had large transactions with that firm as contractors for the first section and as sellers of the company's State bonds.

Q. 78. You state, then, that while the Chatham Railroad Company had large transactions with J. F. Pickrell & Co., both as contractors for building their road and sellers of company's State bonds, that nevertheless no member of said firm, or agent representing said firm, ever appeared before your board of directors, or dealt directly with said company; will you now be so good as to state in what manner the said large dealings of the Chatham Railroad Company with said Pickrell & Co., as both contractors and sellers of bonds, was conducted, if not in person or by agent; please make your answer explicit on this subject, if possible.

347 A. The president of the company, as the organ of the board, was the proper representative of the company, and was the special agent for the negotiation and sale of company's State bonds.

Q. 79. Your answer last given states very clearly that W. J. Hawkins was the authorized agent and representative of the company for the negotiation and sale of company's State bonds, and as such shows who represented the company, but your answer wholly fails to show who acted for or represented Pickerell & Co. in their dealings with or for the Chatham Railroad Company in the construction of their road or sellers of their State bonds; will you now please be so good as to state who represented Pickrell & Co. in these important transactions with the company?

A. Mr. J. F. Pickrell, then of New York, represented the firm of J. F. Pickrell & Co.

Q. 80. Did you ever see J. F. Pickrell represent the firm of J. F. Pickrell & Co. in any dealings with the Chatham Railroad Company or W. J. Hawkins, its president and agent; and, if yea, please state what act was performed by said Pickrell, and when and where he performed it, and state how you derived your knowledge?

A. I know of the existence of a contract entered into by J. F. Pickrell & Co. and the Chatham Railroad Company for the construction of the first section of road, said contract being duly signed by J. F. Pickrell & Co., in the handwriting, I think, of J. P. Pickrell, with all the forms of a solemn contract, and that said contract was regularly presented before the board of directors of the Chatham Railroad Company and duly ratified by said board.

Q. 81. Your answer does not meet the question asked, as it only shows what you have previously stated, that is, the formal making of the contract you have mentioned, which tends to establish the primary relations between John F. Pickrell & Co., and the Chatham Railroad Company, but wholly fails to answer the question as to who represented Pickrell & Co., as contractors for building

348 the road, or as sellers of the company's State bonds after the signing of the contract, and in the rendering of the account current and financial statement to your board of directors, as you have previously testified; please state what act, if any, Pickrell did in this respect, if any, or what act any one else did for him.

A. I do not know who represented Pickrell & Co. in the respects last referred to.

Q. 82. Were or were not, within your knowledge, the said Pickrell & Co. represented by any one in the presenting and settling of the said accounts; and, if yea, please state who it was or in what manner they were represented.

A. I do not know that they had any representation.

Q. 83. Who was the president of the R. & G. R. R. Company on the 2d day of March, 1870?

A. William J. Hawkins.

Q. 84. A letter written on that date, a copy of which is made part of this question, marked V No. 5, is dated and addressed as follows:

"RALEIGH & GASTON RAILROAD COMPANY,
"President's Office,
"RALEIGH, N. C., *March* 2, 1870.

"MR. PICKRELL:

"MY DEAR SIR: I herewith send by request of Dr. Hawkins, president, &c., four vouchers of amounts paid you on contract. It is necessary for you to sign these, which please do at once and forward to Major W. W. Vass, treasurer Chatham Railroad, Raleigh, N. C. The amount in different ways is in my hands. The Dr. goes before the committee on Friday, and I am quite convinced his showing will agreeably surprise his friends and confuse his enemies."

And signed: "Very truly, JOHN D. WHITFORD."

Will you please state whether or not, to the best of your recollection, said four vouchers were signed and sent to you by said Pickrell as requested in said letter?

349 (The defendants object to this question and to the assumed copy of the letter embraced therein.)

(Complainant's counsel states that the original letter in the handwriting of John D. Whitford fully identified and proved in the presence of defendant's counsel making objection and is now in proof forming part of the record, and will be before the court on the trial of this cause, and that the printed copy made part of this question, was duly taken and certified by R. E. Stillwell, before whom the original was put in proof, and that a copy is used because the original is already in the possession of the court.)

A. Have not the slightest recollection of having received the vouchers referred to, and know nothing about the letter itself nor the matters contained therein.

Q. 85. If it be true that such a letter was written by John D. Whitford, at the request of Dr. Hawkins, to Mr. Pickrell, requesting him to sign said vouchers, and forward them to you as treasurer of the company, and such is proved before the court on this trial, would you or would you not then say that in point of fact said Whitford and Hawkins represented said Pickrell, or Pickrell & Co., in their

dealings with the Chatham Railroad Company, and with you as treasurer and disbursing officer?

(Defendant's counsel objects to the foregoing question, and to any answer that may be given thereto.)

A. I decline to answer.

Q. 86. The question repeated.

(Same objection as before.)

A. I decline to answer.

Q. 87. In the said document No. 33, and as part of the examination of William J. Hawkins, introduced in a previous question, appears the following at page 33, to wit: "Q. 5. You say that you received the draft of M. S. Littlefield for $60,000, accepted by Pickrell & Co.; has that draft been paid; and, if so, how and when."

350 "A. I telegraphed to the house of Pickrell & Co. in March, 1869, to know whether the draft had been paid; I received in reply, date 8th March, 1869, a dispatch from John F. Pickrell, a member of the house, dated on that day at Washington, D. C., and now shown the commission stating that the check had been paid on the presentation, and the amount of sixty thousand dollars placed to the credit of the company; on or about the 23d day of June, 1869, Pickrell & Co. rendered their account to me, and in which the company had credit for the sum thus paid."

Have you or have you not any recollection of any such account being rendered to said company or said Hawkins, as its president, in which the said sixty thousand dollars stands credited to the company, except in the account, Schedule A, heretofore shown you?

A. In the account of Pickrell & Co., submitted to the board of directors, and which has been so frequently referred to by me in the course of this examination, the hundred bonds taken by General Littlefield were included and accounted for.

Q. 88. That I quite well understand from your previous answers; the object of the question last asked is to fix the date of said account, to wit, New York, June 23d, 1869, being the same date fixed in the deposition of the said Hawkins above referred to, and to ask if any other account of any other date of said Pickrell & Co., exhibiting the settlement of said sixty thousand dollars referred to; and, if yea, please state what account it was, the date thereof, and present a copy of the same as part of your answer.

A. My recollection is that only one account was ever presented to our board, and it is impossible for me to state the date here and now.

Q. 89. Will you now please look at the debit side of said account, Schedule A, dated September 10th, 1868, the first item being to proceeds of loan, $97,266.67, and the last four items being a charge for money paid for iron rails under voucher No. 6, $50,023.51; No. 7, $61,132.12; No. 8, $26,252.82; No. 9, $79,713.79, and state

351 whether or not such disbursements were made, and vouchers paid by the Chatham Railroad Company to John F. Pickrell & Co., to the best of your knowledge and belief.

(The defendants object to this question as they have objected to others of like character in the examination of this witness, because it assumes that a mere printed slip is an authentic document, which may be made the foundation for question and answer. Defendants insist that it is unwarrantable to attempt to interject into the record the loose paper referred to in the question, until the same has been authenticated; and the defendants object generally to the question and to any answer that may be made thereto.)

The complainants' counsel states that nothing whatever is assumed to be true or not true in the question asked which refers to items of payment purporting to have been made by the Chatham Railroad Company, as shown by the debit side of said account, Schedule A, which is referred to as a means of seeking to identify an account current containing some of the items, to wit, the payment of sixty thousand dollars by M. S. Littlefield, which the witness had testified exists, as being in the possession of the defendant company, of which he, as treasurer and secretary, is *ex officio* the lawful custodian, but does not present said account, or a copy, or fix the date of the same, for which reason his attention is called to the debit side of the said account containing the larger items of charge as therein set forth, and which are not taken from a mere loose printed slip but which is a printed copy of an original paper now in proof as part of the evidence of John F. Pickrell, believed to be in the handwriting of the witness now under examination, forming part of the record of this cause, and will be read in evidence before the court; and a copy is referred to as a means of identification of the account and nothing more, as referred to by the witness.

The defendants, further objecting, say that the printed thing called Schedule A does not purport to be an original paper, and no witness has verified as the copy of any original paper, it is a mere
352 myth and figment of the plaintiff's imagination, and defendants protest and will move to strike out said question and its answer from this deposition at the proper time and before the proper officer.

Complainants' counsel, protesting against the style and terms of the criticism of defendants' counsel, and to meet the same upon the record, states that Schedule A is an exact copy of Exhibit P., No. 28, made part of the deposition of John F. Pickrell, as a paper furnished him by the Chatham Railroad Company, and was introduced in the presence of the counsel making this objection, as will be shown upon the record upon the trial of this cause, and is neither a myth nor a figment, but a fact developed in the taking of testimony of this cause.

A. In the statement of Pickrell & Co. with W. J. Hawkins, president and agent, and which is now in the possession of this company, does not appear, as I believe, any such items of charge, and I have no further knowledge touching the same than contained in said rendered statement.—W. W. Vass.

Q. 90. Referring again to the last four debit items in said Schedule A, to wit, No. 69, for 630 tons, 6.2.26; No. 7, for 770 tons, 6.1.3;

No. 8, for 330 tons, 16.0.15; No. 9, for 1,004 tons, 9.0.18; please state whether or not the Chatham Railroad Company received those quantities of railroad iron from John F. Pickrell & Co., or any other source at any time; and, if so, when.

(Defendants object to this question, same as in next preceding question.)

A. I do not know.

Q. 91. Do you know of said company ever receiving any iron whatever from John F. Pickrell & Co., or any other source, for the construction of their road, preceding the 6th day of March, 1869; and, if yea, please state when, and from whom received, and what amount was paid therefor.

A. I only know in the general that iron was placed upon the first section during the time John F. Pickrell & Co. were contractors therefor, but the particular time I do not know, nor do I know what amount was paid therefor, or from whom it was received.

353 Q. 92. Do you or not know, as the secretary and treasurer of said Chatham Railroad Company, that it ever paid for any iron to anybody to be laid on the said road during the construction of the first thirty miles thereof?

A. Of my own knowledge, I do not.

Q. 93. Did you, or did you not, as treasurer of said company, ever enter upon the books thereof any charge or credit to or against anybody, or make or take any receipt or voucher therefor, for iron to be laid on said thirty miles of said road?

A. Dr. W. J. Hawkins, as president and agent, settled for the iron, and a statement of that settlement is comprehended in the account current submitted to the board and heretofore referred to.

Q. 94. Will you please produce a copy of said account current from the books of said company?

A. I cannot do so.

Q. 95. The said company, in its acts and transactions with John F. Pickrell & Co., both as contractors and sellers of State bonds, acted through W. J. Hawkins as its agent, according to your testimony heretofore given. Is or is not that so?

A. W. J. Hawkins, as president and agent, was the proper and legal representative of the Chatham Railroad Company, and when acting in his appropriate sphere bound the company.

Q. 96. Your answer evades my question, which was as to the manner and agency through and by which the Chatham Railroad Company dealt with these sole contractors for building its road—John F. Pickrell & Co.—and sellers of its State bonds, you having testified that they had no direct dealings with the company in the matter of stating their accounts, &c., or receiving pay, but that Dr. Hawkins brought the same before the board; and the preceding question was whether the company always acted through Dr. Hawkins or through some one else, and if through some one else, then I want to know who it was.

354 A. I did not seek to evade your question, and if I can understand it will not evade it. As stated hitherto, Dr. W. J.

Hawkins, as president and agent, was the only authorized representative of the company and agent of the board of directors.

Q. 97. Do you say that Dr. William J. Hawkins was the only agent ever authorized by said company to deal with John F. Pickrell & Co., or to deal with its State bonds, to procure iron for its said road under the said Pickrell contract?

A. I do so state, as the secretary of that company, having as such a knowledge of what constitutes an agency.

Q. 98. In the answer of said company, verified by you, and in the section XXIX and folio 32, occurs the following averment: "The said Pickrell & Co., by themselves and through their agents and sub-contractors, did build and equip the road to a point near Haw river, and furnished iron to its junction with the Western railroad at Sanford, in the county of Moore." Will you please state, if within your knowledge, you ever knew the said firm, or any member thereof, or any agent, or any sub-contractor, doing a day's work on the road; and, if yea, state the name of the member of said firm, or the name of the agent, or the name of the sub-contractor who did and performed, as averred in said answer.

A. Of my certain knowledge, I do not know that either one or all of the members of Pickrell & Co., contractors, ever went upon the road; but I believe that the work was done by them as such contractors, as stated in the answer verified by me.

Q. 99. You state, then, that you never saw yourself, and have no personal knowledge of, any member of the firm of Pickrell & Co. ever having been on said road or having done any work on said road; will you now please state whether you ever saw or knew of said Pickrell & Co. having any agent or sub-contractor on the road; and, if yea, please state who they were. I do not ask for your belief; I ask for your knowledge.

A. I have no knowledge touching the matter inquired about.

355 Q. 100. What was the date of the contract under which said work was done, referred to in your answer?

A. The final contract is dated, I think, March 6th, 1869, and refers to a preliminary contract of date September 1st, 1868.

Q. 101. Were or were not the State bonds owned by said company publicly repudiated and excluded from the Stock Exchange, in New York, as void and worthless, on or about the 1st day of December, 1868?

A. It is understood that such bonds became discredited on the stock boards of New York, but I know not at what time.

Q. 102. Were or were not said bonds within your knowledge so far discredited as to be deprived of all market value whatever as financial securities, and have they not remained so ever since?

A. I have no other knowledge of the market value of the bonds at any time than reported sales of such bonds in the markets of New York, and as to this I have no recollection now.

Q. 103. You state then that you do not know what was the market value of said bonds at any time since they were repudiated on the stock boards and excluded from the market?

A. I do not know the date of such exclusion nor the fact itself,

but believe that the bonds were currently sold in Raleigh and elsewhere at prices ranging from fifty-three to sixty dollars, as late as about June 1st, 1869.

Q. 104. Referring again to your answer or the answer verified by you for said defendant company, called the Chatham Railroad Company. At section XXXII occurs, among others, the following averment: "It" (meaning the company) "did on or about the 3d December, 1868, direct defendant Pickrell to turn over its funds, then held by him, to said Whitford, who was then appointed agent of the company, to receive and hold the same, and the said Whitford, then for the first time, became the agent of this company to hold its funds in the city of New York. This defendant, through its president, said Hawkins, about that time directed said Whit-
356 ford to invest about three hundred thousand dollars of said funds in United States bonds, which was done by him;" will you please state whether or not the direction so given by said company to said Pickrell to turn over its funds to said Whitford was in writing; and, if yea, will you produce a copy thereof as part of your answer?

A. I cannot state positively as to the form of such directions, and if given in writing I could not now furnish a copy.

Q. 105. Can you and will you produce a copy of such instructions, and file the same with the examiner as part of your answer?

A. I cannot answer.

Q. 106. What was the amount of funds then held by said Pickrell belonging to said company, and from what source did he obtain the money which he was so directed to turn over to said Whitford?

A. I can only give my general impressions of the amount; Pickrell & Co. had sold for or purchased from the company a large amount of bonds, and the balance so turned over was probably about $300,000.

Q. 107. The name of Pickrell & Co. does not appear in the averment, but simply and solely the name of Pickrell; will you please state in what capacity he held the money he was directed to turn over to said Whitford by the company, to the best of your knowledge?

A. I presume Pickrell & Co. is the party referred to; Pickrell & Co., under the contract entered into for construction, were to take or to negotiate at certain fixed rates a large amount of company's bonds, and of course would have to account to said company for any surplus cash in their hands belonging to said company.

Q. 108. It seems then from your answer last given that the Chatham Railroad Company did have some financial dealings with said John F. Pickrell or John F. Pickrell & Co.?

A. Certainly; the company in making W. J. Hawkins, president, the special agent for the negotiation of its bonds, never surrendered any of its just rights in the premises.

357 Q. 109. Did or did not the company receive just 3,200 bonds from the State of North Carolina?

A. I think that was the amount of the bonds.

Q. 110. As treasurer of the company don't you know it was?

A. I think that is the correct amount, but as treasurer of the company the bonds never came into my hands.

Q. 111. By section XXXV of the company's answer, verified by you, you state that seventeen hundred and three of said bonds were returned to the treasury, meaning the treasury of the State; I will now ask you to state whether or not the three hundred and eighty-seven (387) bonds and thousand (1,000) bonds, and the hundred (100) bonds, mentioned in the credit side of Schedule A, does not make up about the total of said thirty-two hundred bonds which the company received from the State, and was not the money in the hands of Pickrell & Co., which the company directed him to turn over to Whitford, derived from the proceeds of the fourteen hundred and eighty-seven bonds, being the aggregate of the three quantities last named?

A. In the company's answer referred to it was correctly stated that seventeen hundred and three (1,703) of the bonds, three thousand two hundred (3,200) bonds, had been returned to the public treasurer of the State, as required by an act of the Legislature of North Carolina; deducting the seventeen hundred and three bonds returned, as stated, there would remain fourteen hundred and ninety-seven bonds, which have been accounted for by W. J. Hawkins, president and agent; I think the three hundred and eighty-seven (387) bonds, and the thousand (1,000) bonds and the one hundred (100) bonds, make about the same amount, with a discrepancy of ten bonds; I cannot say whether the funds in the hands of Pickrell & Co. were derived from the sale of the fourteen hundred and eighty-seven bonds referred to, but it was derived from the sale of bonds, as his account, heretofore referred to so often will show.

(This question and answer objected to by the defendants.)

358 Q. 112. It is quite certain, is it not, that the funds in the hands of Pickrell, or Pickrell & Co., was not derived from the seventeen hundred and three bonds that you have sworn were returned to the State treasurer; is not that so?

A. Yes.

Q. 113 It being true, then, that the said fund was not derived from those seventeen and three bonds returned to the State treasurer, is it not equally certain that said fund in the hands of Pickrell & Co., so turned over to Whitford, was derived from the remaining fourteen hundred and eighty-seven or ninety-seven bonds, as the case may be?

A. Yes; if the said Pickrell sold the remaining fourteen hundred and ninety-seven bonds, as his account referred to may show.

Q. 114. In order that you may be more accurately and satisfactorily advised as to who sold the bonds, of which you seem to have some uncertainty, I will again call your attention to the second answer of William J. Hawkins, to whom you refer, given upon oath in said Document No. 33, at page 124, made part of this examination, as follows: "A. On the 21st of December, 1868, sold by J. F. Pickrell & Co., 387 bonds at 63, netting $238,005; at same time, or about same time, J. F. Pickrell & Co. took 1,000 at 60, amounting to

$600,000, and one hundred sold to General Littlefield at sixty, and his draft for amount was accepted by J. F. Pickrell & Co.;" and which statement, at page 126, contains the further sentence, that "on or about the 23d day of June, 1869, Pickrell & Co. rendered their account to me in which the company had credit for the sum thus paid;" do you question the sworn statement, and does it not show you positively that said 1,487 bonds were sold by said Pickrell & Co., and that the money turned over to Whitford was derived from that source?

(Defendants object to all of the above question which speaks of the printed book or paper which complainant is pleased to call Document No. 33, and objects to the witness looking at said print for any purpose whatsoever.)

359 The complainants' counsel states that he is pleased to call said book just what it is officially styled and marked, to wit: "Legislative Documents and Executive and Legislative Documents laid before the General Assembly of North Carolina, session 1869–'70," and refers to it as an authentic and public act, and to be treated and respected as such, and protests against the counsel proclaiming against the witness looking at the same, within the scope and for the purpose of the question.

A. I do not at all question any statement which may have been made by W. J. Hawkins, and quoted in the printed book referred to and shown to me, touching the sale of the bonds; nor do I doubt but that the statement of Pickrell & Co., referred to, does show the sale of about the same number of bonds; but I cannot now say positively whether the account of Pickrell & Co. covers precisely this number; the money in the hands of Pickrell was, of course, proceeds of sales of such bonds.

Q. 115. When was the said Chatham railroad completed to its present termini?

A. Some time in 1878, I think.

Q. 116. When was the first section completed?

A. About 1870, as well as I can recollect.

Q. 117. Was the whole of said road to its present termini built under the contract of said Pickrell & Co.?

A. No.

Q. 118. What part was built under said contract and what part was not?

A. The first section of thirty miles or upwards was built under the contract with Pickrell & Co.; the remainder was not.

Q. 119. When was the contract with Pickrell & Co. limited to the first section of thirty miles or thereabouts?

A. About the 6th of March, 1869.

Q. 120. Under what contract was the work done previous to 6th of March, 1869?

360 A. Under the preliminary contract of date about September 1st, 1868.

Q. 121. Have you said contract or a copy thereof?

A. I have not.

Q. 122. Will you please now look at a printed paper, being Exhibit P., No. 3, of the deposition of John F. Pickrell, a copy of which is made a part of this question, marked V. No. 5, and state whether or not the same is or is not a correct copy of the said preliminary contract, as you have styled it, under which work was done on said road previous to 6th of March, 1869, to the best of your knowledge and belief?

A. I cannot say that it is a correct copy of the preliminary contract to which I have referred, but it impresses me as being the same as the original in possession of the Chatham Railroad Company, while I note certain parts of the copy printed and here shown as being in italics, and I have no recollection of having noticed the italicized lines when I copied the original.

Q. 123. Is or is not the paper you have just read and referred to in your preceding answer, if the same be a correct copy of the original, the agreement in force on the 3d day of December, 1868, called the preliminary agreement between the said company and Pickrell & Co. for the building of the entire road of the said company?

A. I decline to give a legal construction to so important a document.

Q. 124. Was or was not the road of said company surveyed and located and the cost of construction arrived at by engineer's estimate and survey at the date of said paper, which you decline to construe, to wit, the 1st day of September, 1868?

A. I do not know that it was.

Final Q. Do you or do you not know any other matter or thing material to this your examination besides what you have stated in answer to the questions propounded? If yea, please
361 state the same fully and at large in your answer, as if particularly interrogated thereto.

A. No.

Examination-in-chief closed.

The defendants decline to cross-examine witness.

W. W. VASS.

Sworn and subscribed before me, this 3d day of September, 1879.

[SEAL.] J. R. PURNELL,
Special Examiner.

By consent of counsel, the further examination of witnesses is adjourned until Friday, the 5th day of September, 1879, at 10 o'clock in the forenoon.

T. R. PURNELL,
Special Examiner.

SCHEDULE A.

Dr. *The Chatham Railroad Company in Account with John F. Pickrell & Co.* *Cr.*

1868.					1865.		
Sept. 10.	To proceeds of loan	$97,266 67			Dec. 21. By 387 North Carolina bonds sold at N. Y. Stock Ex., 63 @ 61½	$238,005 00	
	interest and commissions	2,733 33		$100,000 00	1,000 No. Ca. bonds, sold at 61½ to 1½ p. c., 60	600,000 00	
Oct. 19.	check	$42,636 89			100 North Carolina bonds sold to Gen. Littlefield, 60 x	60,000 00	
	"	63,500 00					$898,005 00
1869.				106,136 89			
March 1.	rec'd on acc't of contract No. 1	$93,930 00					
	rec'd on acc't of contract No. 10	62,070 00		156,000 00			
	chairs and spikes, Voucher No. 2	$3,544 42					
29.	locomotive, K. P. Battle	13,071 00					
	ins. iron to Portsmouth	2,113 68					
	storage on iron No. 4	61 60					
	Barney, Butler & Parsons No. 5	100 00					
	630.6.2.26 rails No. 6	50,023 51					
	770 6.1.3 No. 7	61,132 12					
	330.16.0.15 No. 8	26,252 82					
	1,004.9.0 18 No. 9	79,713 79		236,012 94			
	Balance			299,855 17			
				$898,005 00	By balance acc't rendered		$898,005 00
					1869. June 23.		$299,855 17

E. & O. E.
New York, 23 June, 1869.

JOHN F. PICKRELL & CO.

363 SCHEDULE B.

Dr. *The Chatham Railroad in Account with John D. Whitford, Agent.* *Cr.*

1868.				1868.		
Dec. 21.	For 244 U. S. b'ds 67, @ $111		$270,840 00	Dec. 4.	By cash, as per acc't enclosed A	$299,855 17
1869.						
Feb. 11.	" Tredegar Iron Co		1,732 50			
12.	" Barney, Butler & Parsons		250 00			
June 23.	" certified ch. on Continental Bank, N. Y.		10,000 00			
			$282,822 50			
	Balance cash on deposit		17,032 67			
			$299,855 17			$299,855 17
				1869.		
				June 23.	By balance acc't rendered	$17,032 67

E. & O. E.
June 23d, 1869.

JNO. D. WHITFORD, *Agent.*

NOTE.—There are now in the city of New York sixteen hundred and ninety-eight North Carolina bonds issued to the Chatham Rai road Co. (high number) as follows:

Up for iron in Continental Bank	1,150
Deposited in bank	400
Deposited with Greenleaf, Norris & Co.	100
" " Jno. F. Pickrell	58
	1,698

JNO. D. WHITFORD, *Agent.*

SCHEDULE C.

Dr. *J. F. Pickrell in Account with W. J. Hawkins, Pres't and Agent Chat. R. R. Co.* *Cr.*

1868.				1868.			
Dec. 21.	To sales of N. C. State bonds as follows:			Sept. 10.	By cash paid you net loan	$98,266 67	
	Sold 387 bonds at N. Y. Ex., 63.61½	$238,005 00		Oct. 19.	" " " per check	42,636 89	
	Sold 1,000 bonds at N. Y. Ex., 61½.60	600,000 00			" " " "	63,500 00	
	Sold 100 bonds at N. Y. Ex., 60 4	60,000 00					$203,403 56
	Say 1,487 bonds, netting	$898,005 00	898,005 00		" By commissions and int.		2,733 33
				1869.			
				Nov. 1.	Insurance on iron	2,113 68	
				1	Storage "	61 60	
				1.	Barney, Butler & Co., attorneys, paid fees	100 00	
							2,275 28
					By cash rec'd on acc't contract with your road		389,737 66
					By balance		299,855 17
			$898,005 00				$898,005 00
1869				1869.			
June 23.	To bal. due Chat. R. R. Co.		$299,855 17	June 24.	By Jno. D. Whitford, general agent, trans. to him		$299,855 17

E & O. Ex. (Signed) J. F. PICKRELL & CO. New York.

365

SCHEDULE D.

Dr. *Jno. D. Whitford, Agent, in Account with W. J. Hawkins, Pres't Chat. R. R. Co.* *Cr.*

1868.			1868.		
Dec.	4. Cash turned over to me by J. F. Pickrell & Co.	$299,855 17	Dec.	2. By cash paid for 244 U. S. bonds—67 a 1.11	$270,840 00
			1869.		
			Feb.	11. " paid Tredegar Co., for bill	1,732 50
				" " Barney, Butler & Parsons	150 00
			June	23. " cash remitted this day, being certified check on Con. B'nk	10,000 00
				Balance	17,032 67
		$299,855 17			$299,855 17
June	23. To bal. due C. R. R. Co.	$17,032 67			

(Signed) J. D. WHITFORD, *Agent.*

New York, June 23, 1869.

NOTE.—State as before where the other bonds are, &c., &c.

1,150 Continental Bank.
400 " "
100 Greenleaf, Norris & Co.
48 J. F. Pickrell.

1,698

366 SCHEDULE E.

Chatham Railroad in account with John F. Pickrell.

1868. CR.

Sept. 1.	By rec'd com's stamp on $100,000 loan			$300 00
Oct. 15.	" Baltzer & Taaks, ret'd com's			1,250 58
Nov. 2.	" Baltzer & Taaks, ret'd com's, and statement rendered Dr. Hawkins			11,794 27
23.	" Rogers, ret'd com's			225 00
Dec. 2.	" Baltzer & Taaks, per statement herewith			937 44
15.	" Baltzer & Taaks, ret'd com's			4,177 47
26.	By cash from Whitfort, viz:			
	W. C. Schafer's accps.	$6,638 67		
	" dis't off	200 00		
		$6,438 67		
	" cash paid by me	1,438 67		
				5,000 00
1869.				
Feb'y 13.	" cash from Whitford			1,000 00
June 4.	" for compromise in case of "J. F. Carson."			75 00
Sept. 3.	" Baltzer & Taaks' check	$126 99		
"	" W. & T. R. R'd express charges on exchanged bonds	35 39		
				162 38
				$24,922 14

1868. DEBITS.

Nov. 23.	To expenses to Raleigh		$200 00
Dec. 4.	" Whitmore, storage on iron		61 60
8.	" telegrams to and from Portsmouth		6 60
18.	" insurance iron per Carver and policy		162 05
1869.			
Jan'y 2.	" telegram to Whitford, Hawkins and back, 4		18 65
14.	" insurance 8 cargoes iron to Portsmouth		1,719 41
16.	" Tredegar & Co.'s bill		3,544 42
Ma'ch 2.	" expenses to Raleigh		150 00
18.	" telegrams to Whitford, March 11, 16, 18		8 10
Jan'y 19.	" Baltzer & Taaks, 10 bonds		6,150 00
	" Whitford, sundry times		856 80
	" Hawkins, do.		300 00
June 22.	" Baltzer & Taaks, bill insurance iron hence to Portsmouth, Va.		232 40
	" Butler, Barney & Parsons' bill, attorney's advice and drawing agreement iron purchase B. & T.		100 00
Sept. 3.	" express charges collecting draft on R. & G. R. R'd for Anna McCanny cargo iron		232 00

1869.			
Nov. 20.	To expenses to Raleigh		$100 00
1870.			
Oct. 3.	" paid Julian (broker) com. purchase		8 73
	Balance account due road		11,071 38
			$24,922 14
	By balance		11,071 38

E. & O. E.
New York, June 30, 1871.

For JOHN F. PICKRELL,
E. GALPIN.

367 COMPLAINANTS' EXHIBIT V., 3.—SEPT. 2D, 1879.—T. R. PURNELL, *Special Examiner.*

CHATHAM RAILROAD COMPANY,
PRESIDENT'S OFFICE,
RALEIGH, N. C., *Feb. 8th*, 1870.

JOHN F. PICKRELL, *Esq.*

DEAR COL.: Upon examination of returns made by you and Col. W. in here last, I find they do not conform to our manner of keeping our accounts, not having been stated as fully as we would like to have them, and in that form. I send you inclosed form, acceptable to us, not at all varying your account, which you will please make out as of that date, and let us have it as soon as we can get it. We may be called upon by a committee soon to make our exhibit, and would like to have it in ship shape. I send you also reports to be signed by you for amounts paid by our treasurer account of your contract. I have within this inclosed letter for Col. Whitford. Please attend to this at once, and greatly oblige

Yours, truly,

W. J. HAWKINS.

(Endorsed:) "Dr. W. J. Hawkins. Feb'y 8, 1870; ans.;" and also endorsed, "J. F. Pickrell, Esq., and letter for Col. Whitford."

368 COMPLAINANTS' EXHIBIT V., NO. 4.—SEPT. 1st, 1879.—T. R. PURNELL, *Special Examiner.*

"Document, 33. Session 1869–1870.

"*Report of the Senate Investigation Commission.*

"Hon. Thos. Bragg, S. F. Phillips, Will. L. Scott, Commission.

"CHATHAM RAILROAD COMPANY,
"RALEIGH, *March 4th*, 1870.

"Examination of WILLIAM J. HAWKINS who says: I am president of the Chatham Railroad Company, and as such received of the State treasurer thirty-two hundred State bonds of $1,000 each; that is to say, 1,200, numbered 1 to 1,200, inclusive, dated 1st April, 1868, delivered 20th August, 1868, and 2,000, numbered 1201 to 3200, in-

clusive, dated the 1st October, 1868, and delivered 19th October, 1868.

"Q. 1. How have the above bonds been disposed of?

"A. The first named 1,200 have all been sold; of the 2,000 sixteen hundred and fifty are on special deposit in the Raleigh National Bank, forty-eight of them hypothecated by J. F. Pickrell & Co. on account of iron for the road, and the remainder, three hundred and two in number, have been sold.

"Q. 2. To whom were the said bonds sold, by whom, when, and at what price, and the amount of such sale?

"A. On the 21st December (November), 1868, sold by J. F. Pickrell & Co., 387 bonds at 63, netting $238,005; at the same time or about, J. F. Pickrell took one thousand at 60, amounting to $600,000; one hundred sold to General Littlefield at 60, and his draft for the amount was accepted by J. F. Pickrell & Co. On May 29th, 1869, 15 were sold by the State National Bank, Raleigh, at 54–62, netting $8,194.74, making in all sold 1,502, netting in the aggregate $906,196.74; I have received no interest from the State, but have received by way of interest and premiums on funds raised from the sales $29,440.55, making a total of $935,637.29.

369 "Q. 3. Were any of the said bonds hypothecated to raise money; if so, when, to whom, for what amount, and what disposition was made of the fund arising therefrom?

"A. About October, 1868, I hypothecated 225 bonds through J. F. Pickrell & Co., of New York, our bankers there—I don't know with whom they hypothecated them—on which was raised $100,000, which was paid in December following, with proceeds of sales of bonds; I have already said that 48 bonds were hypothecated at Pickrell & Co. for iron; I can't tell who held the bonds; the proceeds arising from hypothecation as above were applied to engineering and construction accounts chiefly.

"Q. 4. What use has been made or is being made of the proceeds arising from sale of bonds?

"A. We have paid out on account of construction materials, equipments, engineering, and pay of officers and employees, and incidental expenses, $685,569.47, leaving a balance on hand of $250,067.82, consisting as follows: 200 U. S. bonds, 5–20's, date '67, cost at $220,000, which are deposited in the Raleigh National Banks; deposited in the Raleigh National and State National Banks $28,067.82; I will procure certificates accordingly and exhibit them, not being able now to state the amounts precisely in each of the said banks; we have completed 30 miles of track, equipped it with 2 first-class locomotives, 28 cars, besides hand and section cars; have on hand 16 miles of iron paid for and not laid down, with chairs, spikes and cross-ties for several miles of track, I think about 4 miles—3 depots and water tanks complete, with wood and material for a year's supply; I will add, however, that portions of the grading between Cary and Haw river had been partially graded during and before I was president; we are now running a daily train from Raleigh to Haw river, near Haywood; I will cause a verified statement of the receipts and disbursements, as to which I have testified, to be made out by

the treasurer of the company and filed with the commission.

370 "Q. 5. You say that you received the draft of M. S. Littlefield for $60,000, accepted by Pickrell & Co.; has that draft been paid; if so, how and when?

"A. I telegraphed the house of Pickrell & Co. in March, 1869, to know whether the draft had been paid; I received in reply, date 8th March, 1869, a dispatch from John F. Pickrell, a member of the house, dated on that day at Washington, D. C., and now shown to the commission, stating that the check had been paid on presentation, and the amount of sixty thousand dollars placed to the credit of the company; on or about the 23d of June, 1869, Pickrell & Co. rendered their account to me, and in which the company had a credit for the said sum thus paid.

"Q. 6. Have you derived, or are you or do you expect to derive, any profit, advantage, or benefit, directly or indirectly, for yourself or any one else, from the use, sale, hypothecation, or otherwise, of the said bonds, or any of them; if so, state what, when, and in what way.

"A. Except as a stockholder in the company, and in common with other stockholders in the same, I have neither derived, am to derive, or expect to derive, for myself or any one else, any profit or advantage whatever, from the sale or use of the said bonds or their proceeds in any manner whatever.

"Q. 7. Have any funds, arising from the sale or otherwise of said bonds, in any manner been used by you or any one else in or about you, or their private transactions or business of any kind; if so, how much, how, and when?

"A. No such funds have been so used by me in such way, or by any one else by my consent or knowledge, in such manner or for such purposes.

"Q. 8. Have you used any State bonds issued since 1st May, 1865, or the proceeds of any such State bonds, or do you know, or have you any information, and what, of any such bonds or pro-

371 ceeds having been used by any one to procure or assist in procuring the passage of any bill or bills through the Legislature or convention of this State; if so, state all the facts fully.

"A. I let General Littlefield have one hundred bonds of those appropriated (2,000) by the Legislature for the Chatham road at 60 cents in the dollar, and on 90 days' time, taking his draft on New York for the amount, which was accepted by J. F. Pickrell & Co., and paid as above stated; the sale was made after the passage of the bill, and in consideration of the services rendered in getting the bill through the Legislature; I let him have the bonds at that price, it being from 3 to 5 per cent. less than North Carolina bonds were then quoted in the New York market.

"I have no information, except from general report, of any such bonds, or the proceeds thereof, having been used for the purposes stated in the question by any others.

"W. J. HAWKINS.

"Sworn and subscribed before the commission.

"THOMAS BRAGG, *Chairman.*"

372 *Statement of the Chatham Railroad Company, showing the amount received from sale of bonds of the State of North Carolina, and how applied:*

Received from the sale of 1,502 N. C. State bonds		$906,196 74
Received interest on U. S. bonds, including premium		28,580 55
Received premium on sale U. S. bonds		860 00
Amount		$935,637 29
Expenses on account construction	$611,000 00	
engineering, &c	18,906 47	
miscellaneous	9,950 27	
freight on iron	13,778 24	
salaries	12,024 66	
expenses	3,777 80	
equipment	4,470 40	
land damages, &c.	3,789 75	
interest	4,533 33	
old debts	728 55	
attorneys' fees	2,510 00	
stock killed	55 00	
depots	45 00	
		685,569 47
Balance cash on hand Feb. 28, 1870		$250,067 82
As exhibited to investigation committee, consisting of cer. of deposit in Raleigh National Bank for $200,000 U. S. bonds 5 20's at 1-11	$222,000 00	
Ditto for cash on deposit	16,462 69	
Cer. of deposit State National Bank, for cash	11,605 33	
		250,067 82

W. W. VASS, *Treasurer.*

Raleigh, March 5th, 1870.

373 COMPLAINANTS' EXHIBIT V., 5.—SEPT. 1ST, 1879.—T. R. PURNELL, *Special Examiner.*

RALEIGH AND GASTON RAILROAD COMPANY,
PRESIDENT'S OFFICE,
RALEIGH, N. C., *March 2d*, 1870.

Mr. PICKRELL.

MY DEAR SIR: I herewith send you, by request of Dr. Hawkins, president, &c., four vouchers of amounts paid you on contract. It is necessary for you to sign these, which please do at once, and forward to Maj. W. W. Vass, treasurer Chatham railroad, Raleigh, N. C. The amount in different ways is in my hands. The Dr. goes before the committee on Friday, and I am quite convinced his showing will

agreeably surprise his friends and confuse his enemies. Stubb will come up to-morrow, special order, at 12 o'clock.

Nothing from repealing act to-day. It is not yet a law, but imagine will be in a little while.

Gen. Littlefield is still here; Mr. Swepson went up the country last night to see, it is said, his wife, and will return to-night. They will be summoned before the Legislature, in committee of the whole, as well as before the Bragg committee. It seems to me some, who seem anxious to get what they can out of these men, are pursuing the course to drive them away, as no one, guilty or innocent, cares about standing up and being ridiculed by political friends and enemies.

Very truly, JOHN D. WHITFORD.

COMPLAINANTS' EXHIBIT V., 6.—SEPT. 3D, 1879.—T. R. PURNELL, *Special Examiner.*

NEW YORK, *Sept. 1st*, 1868.

To the president of Chatham R. R. Co., William J. Hawkins, Esq.

SIR: On behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Charles Gouid, Esq., I propose as follows:

374 1st. To con*struct* to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all the materials for same, at your engineer's estimates, provided they are not less than is allowed for similar work on the Western North Carolina road.

2d. The above is based upon my having the contract to supply your road with all iron required; also all locomotives, spikes, chairs, and equipments generally, at prices to be agreed on between us, so soon as the condition of your company will permit of the making of such contracts.

3d. In accordance with our various conversations whilst you were here, I further agree and propose to accept your State bonds, at prices to be fixed by us, for all supplies contained in Prop. 2, and further, to loan and supply you with all the money you shall require, from time to time, for the purpose of your operations, in building and supplying your road.

(Signed) JOHN F. PICKRELL,
For Self and Associates.

Signed in duplicate.

Accepted, subject to the approval of the board of directors.

(Signed) W. J. HAWKINS,
Pres't Chatham R. R. Co.

I hereby certify that the foregoing is a true and correct copy of the deposition of W. W. Vass, as taken down, written, and composed by me. THOS. R. PURNELL,
Special Examiner.

375 In the Circuit Court of the United States for the Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS

vs.

THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

TUESDAY, *December* 17*th*, 1879.

Met pursuant to adjournment.

Joseph B. Stewart, of counsel for the complainants, and Thomas E. Fuller and Joseph P. Batchelor, counsels for the defendants, The Raleigh & Augusta Railroad Company.

Present: The Raleigh & Gaston Railroad Company, William J. Hawkins, and John D. Whitford.

J. McC. ELLINGTON, a witness produced on the part of the complainants, being duly sworn and being examined by JOSEPH B. STEWART, of counsel for complainants, deposes and says:

Q. 1. Please state your name, age, residence, and occupation.

A. My name is J. McC. Ellington; age, 51 years last November; residence, Apex, Wake Co., N. C.; occupation, dealer in lumber, manufacturer, and farmer.

Q. 2. Were you or were you not at any time, and if so, when, with a company or corporation styled the Chatham Railroad Company?

A. Yes; I have been since the war up to the time the name was changed to the Raleigh & Augusta Air-Line Railroad Company, acquainted with the Chatham Railroad Company.

Q. 3. Do you know where, and, if so, please state, the location of such railroad—where it commences and where terminates?

A. At the time it was called the Chatham railroad I think it was from Raleigh to Sanford or Lockville; it might have continued further.

376 Q. 4. During the time you describe in your last answer, did you or did you not do any work or supply any material to be used in the construction of said Chatham railroad; and, if so, please state, as near as you remember, what time it was, the nature of the work done or caused to be done, and the character of material supplied, if any, to the best of your recollection.

A. I did furnish lumber—some cross-ties, some hard timber; as to the time, I cannot give that, but it was during the construction of the road from Raleigh to Sanford; I superintended the building of the depot at Apex, in part.

Q. 5. Who employed you to furnish such supplies and to perform such labor for said Chatham railroad; and who paid you therefor?

A. Dr. Wm. J. Hawkins, as president of the road.

Q. 6. Did you, or did you not, know John F. Pickrell, or John F. Pickrell & Co., in connection with the said Chatham railroad as contractors or otherwise; and, if you did, did you, or not, perform any labor for or supply any material to said John F. Pickrell & Co., as contractors on said road or otherwise?

A. I never knew John F. Pickrell or John F. Pickrell & Co., and I never did any work or furnished any supplies to them.

Q. 7. You spoke in your previous answer as being engaged as superintendent in the construction of the said Chatham railroad; will you please state, to the best of your recollection, when that was, and over what portion of said road?

A. I was engaged part of two years previous to the close of the war in grading from near Cary to near Haw river as assistant superintendent or section master.

Q. 8. What is the length from Cary to Haw river of said road?

A. Twenty-two miles.

Q. 9. What is the distance from Raleigh to Haw river?

A. Thirty miles.

377 Q. 10. About when did you cease to be assistant superintendent in grading said road?

A. About April, 1865.

Q. 11. How much grading, bridging, and other construction has been done up to that time?

A. The road was nearly graded to within a mile of Haw river; there was no bridging done.

Q. 12. Was there or was there not any additional work done in the construction of said Chatham railroad between April, 1865, and September, 1868, within your knowledge; and, if yea, state about how much.

A. There was no work done that I recollect until they commenced laying the track on that part of the road had been graded.

Q. 13. Please state as near as you can, when it was they commenced laying the track?

A. I cannot answer without reference to some of my books.

Q. 14. Was it or was it not in the latter part of the year 1868, or early in the year 1869?

A. I think it was, but I am not certain.

Q. 15. Under whose supervision, and control, and direction was said track-laying commenced and conducted?

A. My understanding was that it was under the supervision and direction of Dr. Wm. J. Hawkins.

Cross-examination of this witness waived by defendants' counsel.

J. McC. ELLINGTON.

Sworn and subscribed before me, this 17th day of December, 1879.

T. R. PURNELL,
Special Examiner.

By consent of counsel, the further examination of witnesses in this cause is adjourned until to-morrow, Wednesday, December 18th, at 10 o'clock in the forenoon.

T. R. PURNELL,
Special Examiner.

378 DECEMBER 18TH, 1879.

There being no witnesses produced in this cause for either

the complainants or defendants, the further examination of witnesses in this cause is adjourned until to-morrow, the 19th inst., at 10 o'clock in the forenoon.

T. R. PURNELL,
Spec. Ex'r.

DECEMBER 19TH, 1879.

Met pursuant to adjournment.

Joseph B. Stewart, of counsel for the complainants, and Joseph B. Batchelor, of counsel for the defendants, as before stated, being present.

W. E. ANDERSON, a witness on behalf of the complainants, being duly sworn, testified and deposed as follows:

Q. 1. Please state your name, age, residence, and occupation.

A. Name, William E. Anderson; age, 44; residence, Raleigh, N. C.; occupation, bank officer.

Q. 2. Where did you reside in the year 1868?

A. In Raleigh, N. C.

Q. 3. Preceding and during the year 1868, did or did not your position as such bank officer, or otherwise, cause you to have any knowledge of the value in the market of North Carolina bonds?

A. It did.

Q. 4. During the year 1868, or at any time since then, have or have not said North Carolina State bonds been worth what is called par in the financial meaning of the term; and, if not, please state the best of your knowledge and information about how much below par, if any, said North Carolina State bonds were from and after, say the first day of January, 1868, or at any time subsequent thereto?

A. They have not been worth par; in July, 1868, old State of North Carolina 6s were worth in the market between
379 twenty-five and thirty discount; that is to say, they sold from seventy to seventy-five dollars per hundred; subsequently thereto they have ranged much lower.

Cross-examination waived by the defendants.

W. E. ANDERSON.

Sworn and subscribed before me, this 19th day of Dec., 1879.

T. R. PURNELL,
Spec. Ex'r.

By consent of counsel, the further examination of witnesses in this suit adjourned until to-morrow, December 20th, at ten o'clock in the forenoon.

T. R. PURNELL,
Spec. Ex'r.

DECEMBER 20TH, 1879.

Met pursuant to adjournment.

Joseph B. Stewart, of counsel for the complainants, and Messrs. Fuller and Batchelor, counsel for the defendants, as before stated, present.

JOHN F. PICKRELL, a witness on the part of the complainants.

(The complainants' counsel states that the witness, John F. Pickrell, is recalled to be examined as to the contents of certain books of account current, and also to testify as to certain papers referring to witness' connection with this suit, which were not in the possession of, or known to, the complainant at the time said witness was examined in New York, but which, it appears, were in the possession of the defendants at the time of their cross-examination of said Pickrell, but who did not call the said papers to the attention of the said witness, but did introduce some of said papers upon the cross-examination of Benson Van Vliet, and that the said witness is therefore recalled to testify as to the papers brought into proof by the defendants, and the further papers further discovered as aforesaid, and for no other purpose.)

380 The counsel for the defendants state that the witness, Col. John F. Pickrell, as appears by the record, was first examined by complainants, in the city of New York, fully and at great length; that only one or two questions of an unimportant character were at that time put to the witness upon the cross-examination; that subsequently, and after many days, complainants recalled said witness to the city of New York for the purpose of being cross-examined, when and where the defendants declined a further cross-examination; that complainants then, against the protest of defendants, in what was called a re-examination, again interrogated the witness at very great length upon matters which were entirely outside of, and distinct from, the matters about which he had been cross-examined, and the witness, under protest by the defendants, was cross-examined. The deposition of the witness was then formally closed, and the witness allowed to depart for his home in North Carolina, since which time several witnesses have been examined by complainant, and much time has elapsed, and defendants insist that it is unfair to the witness and prejudicial to them to recall this witness at this stage of the proceedings; wherefore defendants object to the proposed examination.

JOHN F. PICKRELL, being duly sworn, deposed as follows, to wit:

Q. 1. You have been examined before in this cause on the part of the complainant, have you not?

A. I have.

Q. 2. Where were you so examined?

A. In the city of New York.

Q. 3. Were you cross-examined by the counsel for the defendants; and, if so, name the counsel.

A. I was examined by Col. Fuller.

Q. 4. Will you please look at the paper now shown you, dated New York, July 6, 1868, "Dear Sir," and signed "Charles Gould, Greenleaf, Norris & Co., 66 Exchange Place," and addressed to "Col. John D. Whitford, 60 Wall street, New York," annexed to the
381 deposition of Benson Van Vliet, and marked V. V., No. 1, and

state whether or not said paper was presented to you on your cross-examination in New York.

A. It was not.

Q. 5. Please look again at said paper and state whether you ever saw the same before, and if you know the handwriting thereof, including the signatures, and for what purpose and at whose instance, if any one, the same was written and addressed, to the best of your knowledge and recollection?

(The defendants' counsel objects to so much of the above question as asks the purpose for which paper was written, for as to that the paper speaks and must speak for itself, and parol evidence as to that is inadmissible.)

(Complainants' counsel asks for such matters connected with the execution of said paper, if any, as are not expressed upon the face thereof, as may be within the knowledge of the witness, and especially as to at whose instance and procurement said paper was written.)

A. Yes; I have seen it before; it was written by Charles Gould, signed by him and Greenleaf, Norris & Co.; I did not see either of them sign it; the paper was handed to me by Mr. Gould, and by me to Col. Whitford, at whose instance it was obtained for the purpose of showing my ability to perform the contract.

Q. 6. The said paper, among other things, states as follows: "We have concluded to accept your proposition for building, &c., of the Chatham railroad from Raleigh to the Gulf, which we understand to be an extension of the Raleigh & Gaston railroad, &c." Will you please state, to the best of your knowledge, who made said proposition; in whose behalf and to whom addressed?

A. I made the proposition to those gentlemen in the behalf of myself and my associate in the contract, Col. Jno. D. Whitford.

Q. 7. The said paper further states: "The present low rates for money suggests prompt execution of the contract if it can be had on reasonable terms." Will you please state whether or not there
382 ever was any contract executed between the Chatham Railroad Company and Greenleaf, Norris & Co., and Charles Gould, or to which they were party, for the building of its road from Raleigh to the Gulf, as suggested in said paper?

A. The letter was addressed to Col. Whitford because I directed Gould to so address it; I do not know what relation Col. Whitford sustained to the Chatham railroad at that time.

Q. 9. Had or had not either the said Whitford or yourself any right or authority to propose, accept, or make, any contract or obligation binding the Chatham Railroad Company to accept or execute a contract, or do or perform the things stated in the said paper of the 6th July?

A. I have none; I know nothing about Whitford's authority.

Q. 10. Who, if any one, connected with the Chatham Railroad Company had any knowledge of said paper or with the building of

said railroad as therein proposed, besides said Whitford and yourself?

Defendants object, because the question assumes that at the time of making of said paper Whitford and the witness had a connection with the Chatham Railroad Company, the witness having distinctly testified that he had no such connection, and that he did not know that Whitford had any such connection.

Complainants' counsel states that the question assumes no such thing, and calls for no such information, but on the contrary asks who, if any one connected with the Chatham Railroad Company, had a knowledge with the contents of this paper, V. V., No. 1, or of the building of the railroad as therein proposed, or addressed to John D. Whitford; the object being to show whether said paper ever came to the knowledge of the Chatham Railroad Company or the defendants, and to ascertain why they put it in evidence in this cause.

A. I know nothing of the paper after I handed it to Col. Whitford.

Q. 11. Did or did not Col. Whitford state or assign any
383 reason why he desired said paper to be written and addressed to him, and, if yea, please state what it was, to the best of your recollection?

(Objected to by the defendants.)

A. I have already answered this morning that the paper was obtained for the purpose of showing that I could furnish the money.

Q. 12. Will you now please look at the paper shown you, made a part of this question, being the same as constitutes Exhibit V. V., No. 2, in the deposition of Benson Van Vliet, taken in this cause, which in part reads as follows: "Whereas it is agreed by and between John D. Whitford, of North Carolina, and John F. Pickerell, of Staten Island, New York, as per agreement between them, dated July 8th, 1868, that they will, under the firm name of John F. Pickrell, take the contract for building the Chatham railroad, understood to be an extension of the Raleigh and Gaston Railroad. Now, this agreement made this day by and between Chas. Gould, of New York, and the said John F. Pickerell, witness, &c., and dated 8th day of July, 1868, signed "Charles Gould, seal," "John F. Pickerell, seal," and state for what purpose, within your knowledge, said paper was executed, in whose handwriting the same is, and the object thereof?

A. It was executed for the purpose of binding me to pay one-half of my profit in consideration of his, Chas. Gould, raising and furnishing all the money that I might require in carrying out a contract proposed to be made by Whitford and myself for building the Chatham railroad.

Q. 13. The said paper, V. V., No. 2, speaks of the agreement entered into by John D. Whitford and John F. Pickerell for building the Chatham railroad under the firm name of John F. Pickerell,

dated July 8th, 1868; have you or not the said original agreement; and, if yea, will you produce the same as part of your answer?

A. I don't know that there ever was a paper signed—certainly I have none.

384 (Counsel for complainants inquires of the defendants if they have such a paper; that is, an agreement between John D. Whitford and John F. Pickerell for building the Chatham railroad, dated July 8th, 1868, as stated in said paper V. V., No. 2, put in evidence by them; and, if yea, will they please produce the same for the inspection of the witness now on the stand?)

(Counsel for defendants do not recognize the right of complainants' counsel to make upon them any such demand, but, as a matter of courtesy, state they have no such paper, and have never seen any such paper. They have no reason to believe, and do not believe, that such paper ever existed.)

(Counsel for complainants requests the examiner to note as part of the examination that the Exhibit V. V., No. 2, put in evidence by the defendants on the cross-examination of complainants' witness, recites the existence of such a paper as of even date therewith and as forming part of the Exhibit V. V., No. 2, and, therefore, calls for the production of the same as a matter of right, so constituting part of defendants' exhibit.)

Q. 14. At or preceding the date of said papers, V. V., No. 1 and V. V., No. 2, constituting defendants' exhibits in the deposition of the said Van Vliet, was there or was there not any existing agreement, verbal or written, between yourself or said Whitford in reference to the profits in building the Chatham railroad; and, if yea, please state whether said Exhibit V. V., No. 2, had any reference thereto.

(Objected to.)

A. Yes, either written or verbal agreements; but which I don't recollect, for an equal division of the profits from the building of the road.

Q. 15. Was or was not said agreement for division of profits in some degree, and, if so, to what extent, modified by yourself and said Whitford in connection with the writing of said paper, V. V., No. 2?

A. I have already said that we originally agreed upon an equal division and afterwards changed that agreement to one-third proportion to me and two-thirds to Whitford.

385 Q. 16. Please look at the paper now shown you, a copy of which I make part of this question, marked Exhibit P., No. 40, and state what knowledge you have of said paper, if any, in whose handwriting it is, and for what purpose the same was written, and in reference to what business transaction, if any, to the best of your knowledge.

(Objected to by defendants generally and specially, because this question and the paper shown are entirely beyond the scope of this

examination as announced by complainants' counsel at the commencement hereof to-day.)

A. Excepting a few figures in right-hand lower corner, the paper is in my handwriting; it seems to be the business of the Chatham Railroad Company, and a memorandum to my book-keeper; it is not an account rendered to the Chatham railroad.

Q. 17. Please look again at said paper, and this time at the endorsement thereon, "Statement bonds and account sales rend. June 23, '69, Chatham R. R. Co.," and state in whose handwriting said endorsement is.

A. In mine.

Q. 18. Did you, or did you not, ever render to the Chatham Railroad Company, or to its president, Wm. J. Hawkins, an account the same, or in substance the same, as shown by said Exhibit P., No. 40, and of the date thereof?

(Objected to, because a writing is called for and is not produced, or its loss, if it ever existed, accounted for.)

A. I don't know.

Q. 19. You have said that said paper, Exhibit P., No. 40, which is headed as follows, "The Chatham R. R'd. in acc't with John F. Pickrell Co.," was written by you as instructions to your book-keeper; will you please state was it designed by you to constitute an account, or to be used as the basis for an account, between yourself and said Chatham Railroad Company; and, if yea, please state whether or not such account ever was rendered by you to the said Chatham Railroad Company or any officer thereof?

A. I recollect nothing about it whatever.

386 Q. 20. Did you ever at any time render any account whatsoever to the Chatham Railroad Company, or to its president, Wm. J. Hawkins, of your dealings in the sale of any bonds belonging to said company or the purchase of any iron therefor?

A. I can't say that I have; my books show no such accounts.

Q. 21. Did you ever sell for the Chatham Railroad Company, through Greenleaf, Norris & Co., or any one else, the bonds described in the credit portion of said Exhibit P., No. 40, or any portion thereof?

A. I don't know that I did.

Q. 22. Do you know that you did not?

A. I don't know that I did not.

Q. 23. Did you, or did you not, furnish to said Chatham railroad, or its officers or agents, the money or iron described in the debtor portion of Exhibit P., No. 40, commencing from and after September 17th, 1868?

A. I don't know whether I did or not.

Q. 24. Do you know that you did not?

A. No.

Q. 25. Will you please state for what purpose, then, you prepared said paper, Exhibit P., No. 40, as you have testified, for your book-keeper?

A. I don't know; I have not testified that I prepared it for my book-keeper.

Q. 26. Please look at the paper now shown you, a copy of which is made a part of this question, marked P., No. 41, headed "Cash Account," being a paper pasted upon a blank sheet, and state in whose handwriting the original of said paper is, and to what business transaction, if any, the same refers.

(Objected to generally, and as wholly irrelevant, it appearing to be a private memorandum of Col. Pickrell's which was never shown to the defendants.)

387 (Complainants' counsel states that the paper P., No. 41, has only been discovered since the former examination of the witness, and is introduced as evidence tending to support the allegation of complainants' bill that defendants Hawkins and Whitford shared in equal proportions, to wit, one-third each, with the witness in the profits derived from the building of the Chatham railroad.

A. It is my handwriting, except the figures on the paper to which the torn paper is pasted. I presume it refers to North Carolina bonds, but I have no recollection whatever of it, and it can be only a memorandum for my own purpose.

Q. 27. Did not the bonds and funds therein described in any manner come into your hands or enter into any transaction you had with the Chatham Railroad Company?

A. I don't know.

Q. 28. You spoke something about your books in reference to P. No. 40 and P. No. 41. Did I understand you to say that your books did not contain any such items of account with the Chatham Railroad Company or any of its officers as stated in said Exhibits P. No. 40 and P. No. 41?

(Objected to generally, and specially on the ground that the witness has stated that his books contain no such items of account.)

A. Yes.

(The question as to Exhibit P. No. 34, previously testified to by the witness, as an account appearing on his books in manner and form as presented and testified to by him substantially, and as being the only account with the Chatham Railroad Company on his said books, it is agreed by counsel that said account Exhibit P. No. 34 may be read in evidence without the production of the book before the examiner and court, to the same extent as if the said book were produced and verified.)

388 Cross-examined by defendants' counsel:

Q. 29. I hand you paper:

"NEW YORK, *September 1st*, 1868.

"W. J. HAWKINS, Esq.

"SIR: On behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Charles Gould, Esq., I propose as follows:

"1st. To construct to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and signed John F. Pickrell, for self and associates."

State whether or not this paper is in your handwriting; and, if you answer yea, state whether or not you had due authority from Messrs. Greenleaf, Norris & Co. and Chas. Gould to propose such contract as in said paper set forth. A copy of said paper constitutes Exhibit P. No. 3 of your former examination.

(Complainants' counsel objects to the question and to the introduction of said paper at this time, and to any answer that may be given thereto, for the reason that said paper was called into evidence in the examination of the witness before the examiner, R. E. Stillwell, in New York, under date of April 4th, 1879, by question No. 27, and repeatedly subsequently thereto, to which the witness made answers in the presence of the defendants' counsel, who had and exercised their right to cross-examine the witness in reference to said paper in such manner and to such extent as they saw fit and elected to do, and have no right to introduce and cross-examine said witness about said paper in this special examination as to matters not previously testified about, beyond which the examination cannot lawfully go.)

A. The paper was written by me, except "accepted subject to the approval of the board of directors, W. J. Hawkins, president Chatham R. R. Co.," and I considered myself fully empowered then (and do now), with my arrangement with Greenleaf, Norris & Co. and Chas. Gould, to use the language I did in my propositions.

389 Q. 30. Did Greenleaf, Norris & Co. and Charles Gould ever revoke or withdraw such authority to you to so use their names prior to September 11, 1868?

(Objected to by complainants' counsel, for reason before stated.)

A. They have never withdrawn it.

Q. 31. On the 11th of September, 1868, were not John F. Pickerell, Chas. Gould, and the firm of Greenleaf, Norris & Co., and each of them, in good financial standing and credit in the city of New York?

(Objected to, for reasons before stated.)

A. Yes.

Q. 32. Please give an estimate, as near as you can, of the financial standing and rating of each of said parties upon said 11th of September, 1868.

(Same objection.)

A. Mr. Gould was estimated at half a million; Mr. Williams, of the Metropolitan Bank, of whom I inquired as to Messrs. Greenleaf, Norris & Co.'s standing, said they were good for anything they would agree to do; another moneyed man of whom I inquired told me he considered them as worth a million of dollars; I was rated on the books A 2 and A 1; such rating would indicate half a million—a million,

and a million to a million and over; as to my own standing, when I first saw my rating in the books, it was A 2, and when I noticed it latter it was A 1.

Q. 33. Was not the financial standing of Chas. Gould, Greenleaf, Norris & Co., and yourself known to Baltzer and Taaks?

(Objected to, for the same reasons before stated.)

A. I presume so.

Q. 34. Did you conceal from Baltzer & Taaks or did you inform them at and prior to the 11th of Sept., 1868, that Messrs. Gould and Greenleaf, Norris & Co. were your associates to build the Chatham railroad?

(Objected to, for the reasons before stated.)

390 A. I concealed nothing from Baltzer & Taaks, nor did I inform them that Chas. Gould and Greenleaf, Norris & Co. were associated with me.

Q. 35. On the 11th of September, 1868, did you have the ability, credit, and business connection in New York to carry on all of your engagements and undertakings?

(Objected to, for the reasons before stated.)

A. The only engagement I had at that time, involving money or credit, was the Chatham railroad contract; I certainly would not have undertaken that without having made the arrangements I did with Greenleaf, Norris & Co. and Chas. Gould, for I did not consider myself as having sufficient money, credit, or acquaintance in New York.

Q. 36. I repeat the above question, and ask for an answer.

(Objected to, for the reasons above stated.)

A. Certainly I had.

Q. 37. Did you not make a proposition to complete the Western Division of the Western North Carolina railroad?

(Objected to, for the reasons above stated, and for the further reason that it is wholly immaterial and irrelevant.)

A. I made a proposition to build a part of that road; how much I do not now recollect.

Q. 38. Did you not make a proposition to complete the Wilmington, Charlotte and Rutherford road from some point at near Wadesboro' to Charlotte, grading, iron, bridges, and everything, a complete job?

(Objected to, for reasons before stated.)

A. I have no recollection of ever making any such proposition, and I don't believe that I ever did.

Q. 39. Did you not make a loan to the Shelby railroad, through its president, Plato Durham; and, if so, to what amount?

(Objected to, for reasons before stated, and for the further reason that it is inquiring into private business matters not involved in this suit.)

391 A. I discounted Plato Durham's draft on the Shelby and South Carolina Railroad (I believe) for two thousand dollars and lost the money.

Q. 40. Did you not make such loan or discount with the expectation that you were to be negotiator of the securities and contractor for the building of said road?

(Complainants object to the question, for reasons before stated, and further advise the witness that he has a right to decline to answer such question, if he elects so to do.)

A. Yes.

Q. 41. Did not you and your friends propose to purchase the Seaboard and Roanoke railroad, extending from Norfolk, Va., to Weldon, N. C.?

(Objected to, for reasons before stated, and witness advised as last above.)

A. No.

Q. 42. I repeat the above question, and show you a paper, hereto annexed, marked Exhibit P., No. 42, and made a part of this question, to refresh your recollection?

(Question objected to for the reasons before stated.)

A. I repeat my answer; no.

Q. 43. Did you make the several propositions about which you have been interrogated in this cross-examination in good faith or not?

(Question objected to, for reasons before stated, and the witness advised that he is under no legal obligation to answer the question.)

A. Undoubtedly in good faith.

Q. 44. How long have you known Herman R. Baltzer?

(Objected to, for reasons before stated, and for the further reason that it is a question before asked of the witness by the defendants on a former examination and answered by him.)

A. I really can't tell.

392 Q. 45. Before and since the 11th of September, 1868, were not Mr. Baltzer or Messrs. Baltzer & Taaks large dealers in stocks and bonds, both buying and selling, in the market of New York?

(Question objected to, for the reasons before stated, and as having no direct bearing upon the examination of the witness under the present recall, and as being incompetent and irrelevant.)

A. I believe they were.

Q. 46. Were not Baltzer & Taaks operating largely in North Carolina bonds before November 21st, 1868?

(Question objected to, for reasons before stated, and as Mr. Baltzer has been examined and cross-examined by the counsel, and who was most competent to testify as to his business transactions, and

should have been interrogated thereto, if authorized by law, and for the further reason that the question is irrelevant.)

A. I don't know.

Q. 47. Did not you on or before November 21st, 1868, have dealings in North Carolina bonds and other money matters with Baltzer & Taaks?

(Question specially objected to, for the reason that this witness, being on the stand as before stated, and being thus interrogated about his dealings with Baltzer & Taaks, and should have been cross-examined in relation thereto, so as to have afforded Mr. Baltzer an opportunity to have him interrogated as to the same matters, and for the further reason that Mr. Baltzer himself, having been examined on the part of the complainants and elaborately cross-examined by the counsel for the defendants, should have been asked as to his dealings in North Carolina bonds if material and proper, he being the best evidence, instead of seeking to enquire into the same in this indirect manner.)

A. Yes.

Q. 58. Would not the books of Baltzer & Taaks, if produced,
393 show the dealings you had with them in North Carolina bonds?

(Objected to, for reasons before stated.)

A. I don't know.

Q. 49. Were you not the contractor for building the Chatham railroad, and did you not hold yourself out as such, and did you not receive pay as such from September, 1868, down to and as late as August, 1871?

(Question objected to, for reasons before stated, and as having no reference to the direct examination, and as illegal and irrelevant.)

A. Yes.

Q. 50. Look at the paper now shown you, a copy of which is hereto annexed, marked Exhibit P., No. 43, addressed to W. J. Hawkins, Esq., P'd't, &c., dated July 30, 1871, and signed John F. Pickerell, and say in whose handwriting the same is.

(Question and paper offered objected to, for reasons first stated, and as being wholly irrelevant to the matters involved in the present examination.)

A. In mine.

Q. 51. Please look at paper now shown you, a copy of which is hereto annexed, marked Exhibit P., No. 44, dated Newbern, August 3, 1871, addressed W. J. Hawkins, P'd't, &c., and signed John F. Pickerell, and say in whose handwriting the same is.

(Question objected to, for the reasons before stated.)

A. In mine.

Q. 52. Under the request contained in the two last mentioned

exhibits, state how much money you received from the Chatham Railroad Company or its officers.

(Question objected to, for reasons before stated.)

A. I really don't recollect; possibly the whole amount asked for.

Q. 53. In your dealings with the Chatham Railroad Com-
394 pany or any officer thereof, from first to last, did you ever see, handle, negotiate, or sell any North Carolina State bonds for or on account of said company or officer?

(Objected to for reasons before stated, and as wholly irrelevant.)

A. I don't believe I ever did.

Q. 54. It has been stated that you negotiated a loan on account of the Chatham Railroad Company for one hundred thousand dollars from Baltzer & Taaks; was that loan negotiated on old or new bonds; and to refresh your recollection thereon I hand you two papers, copies of which marked respectively, Exhibits P., No. 45, dated September 1, 1868, and September 16, 1868, marked P., No. 46, are hereto attached?

(Question objected to for reasons before stated, and for the further reason that the question does not disclose to the witness who made the alleged statement, or where and in what manner it was made, or whether the statement was verbal or written, and, if written, should be shown to the witness, and, if the part of a deposition, the deposition should be pointed out and sent to him.)

A. I have no recollection of this matter whatever. The papers are in my handwriting, but I have never received any old bonds from Dr. Hawkins, nor any other officer of this compady; I have no doubt those were new bonds.

Q. 56. Were the bonds mentioned in said two exhibits last above referred to sold by you to Baltzer & Taaks and by them accounted for to you?

(Question objected to for reasons before stated, and for the further reason that the witness has testified that he recollects nothing whatever of the transaction, and the question assumes that he does not know the transaction and attempts to leading him into saying it was a bargain and sale.)

A. I don't believe so.

Q. 57. I hand you paper marked Exhibit B. and T., No. 22, of Baltzer's depositions, which exhibit is here referred to as
395 part of this question, and ask you whether the same is an account rendered you by Messrs. Baltzer & Taaks?

(Question objected to, for reasons before stated, and as leading.)

A. Yes; it is undoubtedly the account.

Q. 58. I hand you paper marked Exhibit B. and T., No. 23, with Baltzer's deposition, copy of which is hereto annexed, and ask you if the same is an account rendered to you by Baltzer & Taaks?

(Objected to, for reasons before stated, and for the special reason

that those papers were in the possession of the defendants when this witness was cross-examined by them, and who closed his examination without having brought the same to his attention so as to afford the complainants an opportunity to take further testimony in regard to them, if desired.)

A. It is undoubtedly.

Q. 59. Those two papers, B. and T., 22, and B. and T., 23, spoken of in the last preceding two questions and answers, do they evidence actual transactions between Baltzer & Taaks and yourself, or are they shams?

(Objected to, for some reasons before stated, and as illegal and improper.)

A. Of course they do evidence actual transactions, and were duly reported in the course of business to the Chatham railroad as such by me.

Redirect:

Q. 60. What business of the Chatham railroad, or between you and the Chatham railroad, was it in which you made the report and delivered the exhibits which you have stated, and was it or was it not anything else than the procuring of iron for the said company from Baltzer & Taaks?

A. The sale of the bonds was an absolute sale to Baltzer & Taaks, as shown by their bills of sale; the proceeds of those bonds, I have no doubt, were applied to the payment of iron, but I have no recollection upon the subject; the sales speak for themselves.

396 Q. 61. Did you ever receive any iron from Baltzer & Taaks that was not for the Chatham Railroad Company, and did you ever pay them for any iron, except with the money and securities of the Chatham Railroad Company furnished you for that purpose?

A. No.

Q. 62. Will you please look again at Exhibit P., No. 40, and *and* at the bonds described in the credit portion of said exhibit, and compare them with the bonds described in Exhibits B. and T., 22 and 23, and say if the bonds described are not the same, or a portion thereof, as those described in Exhibit P., No. 40, which bonds were placed in the hands of Baltzer & Taaks to pay for iron?

A. I don't know.

Q. 63. Will you please now look at Exhibit P., No. 28, and state whether or not the bonds described therein are the same as described in Exhibit B. and T., No. 22 and 23, or embrace the same?

A. I think so.

Q. 64. To whom did said one hundred and fifty bonds belong when delivered to Baltzer & Taaks, on or about the 21st of November, 1868; were they not the property of the Chatham Railroad Company?

A. Yes; I presume so.

Q. 65. What consideration was received for the delivery of said 150 bonds to said Baltzer & Taaks, and by whom was it received?

A. The consideration was the amount stated, and that was received, not by me, but by the Chatham Railroad Company.

Q. 66. The bonds were then delivered as the property of the Chatham Railroad Company and not as the property of John F. Pickrell?

(Defendants object to this question, first, generally; second, as leading; third, as putting the argument and inferences of counsel in depositions of witness.)

(The complainant is examining the witness as if cross-
397 examination, for the reason that the defendants have in no manner cross-examined the witness as to matters about which he was examined under the recall, within the bounds of which the complainants strictly limited themselves, while the defendants have commenced their examination upon matters upon which the witness was examined in chief on the 24th day of April, 1879, pursuant to which they then had and exercised their right to cross-examination and legally exhausted the same; while their present examination is strictly an original and direct examination under the color of cross-examination entirely beyond the limits allowed by law.)

A. The bonds were delivered to pay for iron.

Q. 67. And the Chatham Railroad Company received that iron, is that so?

A. Yes.

Q. 68. How soon after said bonds described in Exhibits B. and T., Nos. 22 and 23, reported to you as sold by Baltzer & Taaks, was it that they were declared unconstitutional and void and expelled from the market, if such did occur to said bonds?

A. I don't know.

Q. 70. On or about the 2d or 3d day of December, 1868, were you not directed by William J. Hawkins, as president of the Chatham Railroad Company, to transfer to the account of John D. Whitford all moneys and bonds standing in your name or under your control, at Greenleaf, Norris & Co.'s, to the account of John D. Whitford as agent, and had not said bonds been excluded from the market before said order was given?

(Objected to, generally and specially, if the answer of witness shall show the said direction was in writing, until said writing is pro-
duced; and further, because the witness has heretofore been ex-
398 amined fully by plaintiff's counsel as to the same matter; and further, that defendants' cross-examination upon this reintroduction of the witness has not referred in any way to the subject of inquiry now reintroduced by plaintiff's examination.)

A. Yes.

Q. 71. In your examination by defendants you were asked as to the paper of the 1st of September, 1868, as to whether the names of Greenleaf, Norris & Co. and Charles Gould, as contractors for building the Chatham railroad, in which you referred to a certain arrangement with those gentlemen with reference to the use of their

names, which does not appear upon the face of said paper; will you please now state just what that arrangement was, how, when, and what manner made, and what such party was to do and perform, to the best of your recollection?

(Question objected to, generally and specially, because the contract referred to and attempted to be proved was one to which the defendants, represented by counsel, were not parties, and in which they had no interest, and which has not been called for by them in their cross-examination.)

A. Greenleaf, Norris & Co. and Charles Gould agreed to furnish me all the money I required to carry on my contract to build the Chatham railroad.

Q. 72. Upon what conditions and security, or consideration, were Greenleaf, Norris & Co. and Charles Gould to furnish said money?

(Objected to.)

A. Upon satisfactory security.

Q. 73. Do you mean by your answer last given that Greenleaf, Norris & Co. were a party to any contract which compelled or required them or Charles Gould to build, or cause to be built any portion of the Chatham railroad, or pay for any work or material furnished or supplied to said road; and, if yea, please state distinctly when they bound themselves to do such work or pay therefor, and by virtue of what contract?

399 (Objected to by defendants generally and specially, because it requires the witness to state his construction of the contract, either proved or tempted to be proved.)

A. No.

Q. 74. The first section of the paper dated September 1st, 1868, proposes, first, to contract to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., and furnish all the materials for the same at your engineer's estimates, provided they are not less than is allowed for similar work on the Western North Carolina road; will you please state whether or not engineer's estimates ever were furnished to said Greenleaf, Norris & Co., or any statement of the cost of the work on the Western North Carolina railroad, submitted to or any contract made or executed between the Chatham Railroad Company and any one else, for the construction of said road, to which Greenleaf, Norris & Co. and Charles Gould were parties?

(Objected to by defendants.)

A. Not that I have any knowledge of.

Q. 75. You were asked by the counsel for the defendants in reference to a certain number of bonds, upon which it was alleged you received certain money from Baltzer & Taaks, the particulars of which you said you did not remember. Will you please look at Exhibit B. & T., No. 31, made part of the deposition of H. R. Baltzer, and state whether or not said exhibit enables you to remember any-

thing about said transaction, and, if yea, please state what it was, to the best of your recollection?

A. No.

Q. 76. Will you now please look at the Exhibit P., No. 45, introduced by the defendants on your present examination, and the Exhibit P., No. 40, introduced by the complainants, under the debtor portion of said exhibit, under date of September 10th, at the item of $97,266.67, and interest and commissions $2,733.33, and state whether or not said papers in reference to said items do not represent one and the same transaction.

400 A. I do not know.

Q. 77. Do they not represent one and the same amount to a fraction?

A. Certainly not.

Q. 78. The debtor item, referred to in Exhibit P., No. 40, 1868, September 10: "Proceeds of loan, $97,266.67, add interest and commissions, $2,733.33, aggregating $100,000;" while the account in Exhibit P., No. 45, starts with $100,000—stamps, 850, commissions $250, aggregating $2,733.33, making proceeds $97,266.69 in each paper; will you please look again at such paper, and state whether or not such is not the fact?

A. Why, undoubtedly.

Q. 79. You were asked by the defendants as to old bonds or new bonds being for some purpose placed in your hands, or dealt with Messrs. Baltzer & Taaks previous to the 11th September, 1868; in the 3d article of the contract, dated the 11th of September, 1868, it reads as follows: "313. The iron is to be paid for as follows: The party of the second part (meaning John F. Pickerell) is to deposit with the Continental Bank, on or before the execution of this agreement, such an amount of the bonds of the State of North Carolina as will, at their market price, on the day of the deposit, be equal to the whole of the purchase money of the said ten thousand tons of iron, &c., &c." was or was not such deposit of said bonds made by you before the execution of said contract, dated September 11th, 1868?

A. I don't know.

Q. 80. Was such deposit made by anybody within your knowledge or information?

A. Yes.

Q. 81. Whom?

A. I don't know.

Q. 82. Who made the deposit?

A. I don't know.

Q. 83. Was the deposit of bonds of which you have stated you
401 have knowledge made previous to the signing of the said contract or concurrent therewith, dated 11th September, 1878?

A. I don't know.

Q. 84. Did you ever have said bonds as described in the 3d article of said agreement in your individual possession at any time or for any purpose; and, if yea, when?

A. No.

Recross-examination:

Q. 85. The Chatham Railroad Company received the iron from Baltzer & Taaks under your contract with Baltzar & Taaks, dated September 11th, 1868; is this so or not?

(Question objected to.

A. Yes.

Q. 86. Baltzer & Taaks through you received the bonds belonging to the Chatham Railway Company, and sold enough of said bonds to pay for all of said iron; is that so or not?

(Question objected to, as simply asking for a conclusion, and the conclusion suggested at that.)

A. Yes.

Q. 87. The iron then having been delivered, and having been paid for, why is the account not settled and balanced?

(Question objected to, as simply arguing a conclusion and asking the witness to ratify it.)

A. I don't know.

Redirect:

Q. 88. As by the terms of the paper dated September 1st, 1868, and the further paper, dated March 6th, 1869, it is provided that John F. Pickerell & Co. and associates were to receive said North Carolina State bonds at 60 cents on the dollar to the amount of $611,000 in payment for said work; will you please state whether or not said bonds could be the property of John F. Pickrell & Co. in payment for work, and the property of the Chatham Railroad Company, to be used in payment for iron at the same time as
402 would appear by these papers and your answer last given, and was or was not such the fact?

A. I don't know.

By consent of counsel, the witness, John F. Pickerell, is allowed to make the following statement, to wit:

At page 57, under folio 152 of his printed deposition, I say I had bought 51 bonds; I now say my books show that I bought 54 bonds; of these I handed 53 to Col. Whitford, and should have received from him a receipt of mine to Dr. Hawkins for (48) forty-eight bonds; I have been unable to find such receipt among my papers.

JOHN F. PICKERELL.

Sworn and subscribed before me, this 24th day of Dec., 1879.

THOMAS R. PURNELL,
Special Examiner.

Complainants here closed their testimony in chief.

T. R. PURNELL,
Special Examiner.

403 EXHIBIT P., No. 40.—In Deposition of John F. Pickerell, taken December 24, 1879.—T. R. PURNELL, *Spec. Ex'r.*

The Chatham Railroad in account with John F. Pickrell & Co.

Cr.

1868.			
	100 N. C. bonds, $100's, *a* 61½—1½=$6.09		$600,000 00
	100 " " sold Gen. Littlefield *a* 60		60,000 00
Dec. 21.	381 " " " by me at regular Stock Exchange, average 63½=61½.		238,005 00
			$898,005 00

Dr.

1868.			
Sept. 10.	Proceeds of loan	$97,266 67	
	Add int. and coms	2,733 33	
			$100,000 00
Oct. 19.	Check		42,636 89
	"		63,500 00
March 1.	Rec'd on acc. contract No. 1		93,930 00
29.	" " " No. 10		62,070 00
	Chains and spikes, Voucher No. 2		3,544 42
	Locomotive K. P. Battle		13,071 00
	Ins. iron to Portsmouth, No. 3		2,113 68
	Storage on iron, No. 4		61 60
	Barney, Butler & Parsons, No. 5		100 00
			$381,027 56

T.	*C.*	*Q.*	*Lbs.*			
630	6	2	26	rails,	No. 6	5,023 51
770	6	1	3	"	No. 7	61,132 12
330	16	0	15	"	No. 8	26,252 82
1,004	9	0	18	"	No. 9	79,713 74
						$599,049 83

$898,005 00
598,049 83

$299,855 17

Figures enclosed in these circles not in Mr. Pickrell's writing.

404 EXHIBIT P., No. 41.—December 24, 1879.—T. R. PURNELL, *Spec. Ex'r.*

Cash Account.

1,000 bonds *a* 61½—1½=60		$600,000
487 " *a* 63—1½=61		299,505
		$899,505
Due to me on contract	$424,000	
Due to me for 100 bonds marked Heck, and the 100 and 60 marked Littlefield, that I account for, although I never had them	156,000	
Due to me profit not accounted in profit on the 1,000 bonds taken *a* 60 per cent.	30,000	
	$610,000	
P'd the Dr	100,000	
" "	43,000	
		$753,000
Leaving due the Dr		$246,505
But the Dr. has to pay for iron, and the work already done and to be done—in amount, say the items	$424,000	
And my profit, exclusive of what I made on the 1,000 bonds	30,000	
		$454,000
		$600,000

(Portion outside of this red line torn off, but extensions made accurately.)

Deduct from this amount the cost of iron at Norfolk and on hand, and whatever is still be paid by the Dr. on the item $454,000, &c.

405 EXHIBIT P., No. 42.—Deposition of John F. Pickrell, Dec. 24, 1879.—T. R. PURNELL, *Spec. Ex.*

OFFICE OF JOHN F. PICKERELL,
42 BROADWAY, P. O. BOX 5696,
NEW YORK, *August 7th*, 1869.

DEAR SIR: We had some conversation in Raleigh on my first visit there in reference to S. & R. railroad, and recently at Portsmouth, with Gen. Stubbs, I got some information through Major Grice, as per enclosed papers.

The business of the road must, I think, largely increase under liberal management, but even now it will pay ten per cent. on two and half millions, stock and bonds, thus admitting profit in new and increased stock of one million at least. Can't we manage to get hold of this road? It seems to me that in your hands and management it could be made most profitable.

Yours, truly, JOHN F. PICKERELL.

Dr. W. J. HAWKINS.

406 EXHIBIT P., No. 43.—Deposition of John F. Pickrell, taken this 24th Dec., 1879.—T. R. PURNELL, *Spec. Ex.*

PURCELL HOUSE,
WILMINGTON, N. C., *July* 30, 1877.

W. J. HAWKINS, Esq., *P'd't, &c.*

DEAR SIR: In consequence of my hurried departure from New York on the 20th inst. I had no time to settle and arrange my money matters, and I need more money that I am promptly prepared to pay. I wish you therefore to remit to "Metropolitan Bank," New York, two thousand dollars ($2,000), and check on New York to my credit, and charge same to me on account my contract with Chatham road.

I expect to go to Newbern on Wednesday morning next. If you receive this on to-morrow or next day in time T me here as above, that you have remitted; otherwise to Newbern, care John D. Whitford, and oblige,

Yours, etc., JOHN F. PICKERELL.

407 EXHIBIT P. No., 44.—Deposition of John F. Pickerell, Dec. 24, 1879.—T. R. PURNELL, *Spec. Ex'r.*

NEWBERN, *August* 3, 1871.

DEAR SIR: I wrote you few days since requesting you to send Metropolitan National Bank, New York, $2,000, to be placed to my credit in said bank, and to charge same to my contract with your road. If you have not done this please do so on receipt of this, and advise me, and write or T at Purcell House, Wilmington.

I expect to leave here on Saturday or Monday next for Wilmington, where I fear I may have to remain for some time.

Please be prompt in remitting and writing me.

Yours, etc., JOHN F. PICKERELL.

W. J. HAWKINS, *P'd't, etc.*

408 EXHIBIT P., No. 45.—Deposition of John F. Pickerell, Dec. 24, 1879.—T. R. PURNELL, *Spec. Ex'r.*

Received, New York, Sept. 1st, 1868, from Dr. Hawkins, president of Chatham railroad of North Carolina, two (2) hundred (200) bonds of State of North Carolina, with the coupons on, for October 1, 1868, for negotiation.

$100,000 at four months from August 31st, 1868.

JOHN F. PICKERELL.
60 *Wall Street.*

		$100,000 00
126 days, at 7 per cent.	$2,433 33	
Stamp	50	
Com'n, ¼	250	
		$2,733 33
		$97,266 67
Check for		97,266 67

Dr. W. J. HAWKINS,
Pres'd't Chatham Railroad.

409 EXHIBIT P., No. 46.—Deposition of John F. Pickerell, Dec. 24, 1879.—T. R. PURNELL, *Spec. Ex'r.*

OFFICE OF JOHN F. PICKRELL,
No. 60 WALL STREET, P. O. BOX 5696,
NEW YORK, *Sept.* 16, 1868.

Received of Dr. W. J. Hawkins twenty-five thousand dollars in bonds of the State of North Carolina. These 25 bonds are (with 200 bonds similar thereto in amount, 225) placed with Greenleaf, Norris & Co., 66 Exchange Place, collateral security for a loan negotiated by me for Dr. Hawkins, for one hundred thousand dollars.

JOHN F. PICKRELL.

I hereby certify that the foregoing are true and correct copies of the depositions of J. M. C. Ellington, W. E. Anderson, and John F. Pickerell, taken before me on the 17th, 18th, and 24th days of December, 1879, and of the exhibts therein referred to and filed with me.

THOMAS R. PURNELL,
Special Examiner.

410 United States Circuit Court, Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY and others.

To the defendants and their solicitors, Joseph B. Batchelor, Thomas C. Fuller:

You will please take notice that you are hereby requested to produce and then and there have present before Thomas R. Purnell, Esq., special examiner, at his office, in the United States court-house, on Tuesday, September 2d, 1879, at the hour of ten o'clock a. m., to be used upon the examination of William W. Vass, a witness on the part of the complainants, adjourned to that day, hour, and place, the following designated papers, records, and documents, that is to say:

1st. A communication addressed: "To the president of the Chat-

ham R. R. Co., William J. Hawkins, Esq'r." dated September 1st, 1868, and signed John F. Pickerell, for self and associates.

2d. The resolutions, if any, of the Chatham Railroad Company, dated Sept. 4, 1868, accepting the said proposal or any other contract or agreement, dated Sept. 1st, 1868, made by John F. Pickrell, Charles Gould, and Greenleaf, Norris & Co., of New York, and produce the original and file a copy.

3d. That you produce a paper dated on or about the said first day of Sept., 1868, signed by the said Charles Gould and Greenleaf, Norris & Co., in reference to the said paper signed by John F. Pickerell, for self and associates, addressed to or sent to the said Chatham Railroad Company, or William J. Hawkins, the president of the same.

4th. That you produce all estimates made by the engineer of said company, if any, for supplies and material furnished to and for any and all work done by said John F. Pickerell or John F. Pickerell & Co. on the said Chatham railroad from and after the date of Sept. 1st, 1868.

411 5th. That you produce all orders or requisitions, if any or of whatever character, made or drawn by said John F. Pickerell & Co. on account of material supplied to or work done on the said Chatham railroad.

6th. That you produce all vouchers signed by said John F. Pickerell & Co. and drawn upon and paid by said Chatham Railroad Company at any time after the 1st of September, 1868.

7th. That you produce any and all resolutions of the board of directors of the said Chatham Railroad Company directing or authorizing the delivery to or use by said John F. Pickerell or John F. Pickerell & Co. of any bonds of the State of North Carolina issued under or by virtue of any ordinance or act of the said State in the year 1868.

Also produce any and all such resolutions directing or authorizing the delivery of or use of any of said bonds by William J. Hawkins, president of said company.

Also, produce any and all resolutions ordering or directing the delivery of any of said bonds to John D. Whitford, to be used or appropriated by him in any way whatever.

You will, in each of the above cases, produce the original record for inspection, and file copies. The making of said copies is hereby tendered to be paid for by the complainants.

8th. You will also produce all bonds received by said Chatham Railroad Company, or by its president, William J. Hawkins, or by John D. Whitford delivered by said John F. Pickerell & Co. or John F. Pickerell, in reference to the proposal or agreement, if any, by John F. Pickerell, for himself and associates, dated Sept. 1st, 1868, or in reference to the affairs of the Chatham Railroad Company and the building of the road by the said John F. Pickerell & Co., or the providing of the means therefor from and after the said 1st day of September, A. D. 1868.

9th. You will also produce any and all orders or directions given by the said Chatham Railroad Company, or its president, Wil-

412 liam J. Hawkins, to said John F. Pickerell & Co. or said John F. Pickerell, touching or concerning the purchase of ten thousand tons of iron from the complainants, on or about the 11th day of September, 1868, or touching or concerning the use or appropriation of any bonds of the State of North Carolina, issued to or used by the said Chatham Railroad Company for that purpose.

And you will also produce any and all orders and directions given by said company to William J. Hawkins, president, or John D. Whitford, for the purposes mentioned in requisition No. 9, above set forth.

10th. That you also produce the check, draft, order, receipt, and voucher, for the sum of $50,023.81, paid by the Chatham Railroad Company to John F. Pickerell & Co., or John F. Pickerell, or to Baltzer & Taaks, for 3,547 bars of railway iron, Erie T pattern, on or about the 12th day of October, 1868. You will produce the original paper and file a copy.

11th. You will also produce the check, draft, order, receipt, or voucher for the sum of about $74,098.77, paid John F. Pickerell & Co., or to John F. Pickerell, or to Baltzer & Taaks, on or after the 2d day of November, and not later than the 21st day of November, 1868, for an account of three deliveries of iron rail, embracing respectively, 4,341, and 1,859, and 5,642 bars, which were tendered and delivered on and between the dates above mentioned, when the said iron was received and taken possession of by the said Chatham Railroad Company.

12th. You will also produce any and all orders and directions given by said Chatham Railroad Company, or William J. Hawkins, its president, to John F. Pickerell, to turn over to John D. Whitford, agent of said company, the sum of $386,475.94, on the 3d day of December, 1868, together with the answers, if any, of John F. Pickerell thereto.

13th. And you will also produce the order of the said Chatham Railroad Company, or its president, William J. Hawkins, to said John D. Whitford, authorizing him to receive and take charge
413 of the said $386,475.94, so held by said Pickerell as agent of said company; and also any and all orders or directions given to said Whitford to invest the said money so received from the said Pickerell in the purchase of United States bonds. Please produce the originals of said papers for inspection, and file copies.

14th. You will also produce the original agreement purporting to have been entered into by and between the said Chatham Railroad Company and "John F. Pickerell & Co." on the 6th day of March, 1869, for the alleged purpose of building the Chatham railroad from Raleigh to the Haw river; and also produce therewith the resolution, if any, of the board of directors of said company authorizing the execution of said alleged agreement.

15th. You will also produce any and all accounts stated and rendered between the said Chatham Railroad Company for work and labor done and performed by said John F. Pickerell & Co., and for money advanced, and iron, engines, spikes, chairs, and other supplies provided by said John F. Pickerell & Co., with all and singular

director, appointed agent of the said company for any purpose whatsoever.

A. He was not.

Obj. Objected to by complainant's counsel.

Q. 7. State whether or not the said Pickrell, during the period referred to in the previous question, had any authority from the said company to make any contract, as its agent, to purchase iron or anything else for said company.

Obj. Objected to by complainants' counsel.

A. He had no authority.

Q. 8. Who was president of the said Chatham Railroad Company during the time referred to above?

A. William J. Hawkins was president during the time I was director.

Q. 9. State whether or not the president of the company had any authority to appoint an agent to purchase iron for the road without the knowledge and consent of the board of directors.

Obj. Objected to by complainants' counsel, for the reason that it asks the witness to testify as to matters which could only be
417 evidenced by the organization of the company and as to the powers therein vested in the president and other officers thereof, of which the record is the only and exclusive evidence, as the powers of the president or any other officer of said Chatham Railroad Company cannot be proved by parole evidence.

Defendants' counsel state that the books and papers of the Chatham Railroad Company, which is a private corporation, are not records in the sense of the law, but mere private writings, and, as against strangers to the corporation, are not record evidence; but the action of a private corporation must be proved by witneses who know the facts.

A. He had not.

Q. 10. State whether or not the board of directors of the said company ever gave to the said Hawkins, as president, any authority to appoint the said Pickrell its agent for the purpose of purchasing iron for and on behalf of said company, or for any other purpose.

Obj. Objected to by complainants' counsel, as again asking the witness what should be shown and could only be proved by the records of the company.

A. No, sir.

Q. 11. State whether or not it was ever reported to the board of directors of said company by said Hawkins, its president, or by any other person, that the said Pickrell had been appointed agent for said company for the purpose aforesaid, or had ever assumed to act as such agent for said company in that behalf.

Obj. Objected to by complainants' counsel, as leading, illegal, and incompetent, and as further asking the witness to state matters which can only be proved by the records of the company as to what

reports Mr. Hawkins or anybody else did or did not make as the actions of the said Pickrell or any other person, and not by the mere recollection of the witness.

418 Defendants' counsel state that the purpose of the evidence is to show that the company cannot be held resposible for the action of an alleged agent, whose appointment, if such was made, they had never authorized, and whose alleged action was never known or reported to it or its proper officers.

Complainants' counsel, further objecting, states that his objection is not aimed at the purposes of the defendants' counsel, but is directed by the objection taken at the illegal and incompetent mode and method of arriving at that purpose, by asking the witness questions that are leading and otherwise illegal.

A. I have no recollection of anything of the sort occurring.

Q. 12. State, if you know, whether or not there was any contract made by the said company with any person for the building, equipping, &c., of its road; and, if yea, who was the contracting party.

Obj. Objected to by complainants' counsel, as illegal and incompetent.

A. I know there was such contract made, and John F. Pickrell was the contracting party.

Q. 13. Please look at the papers now shown you, marked Complaints' "Exhibit P., No. 3," and "Exhibit P., No. 17," copies of which, respectively, are filed with and annexed to the depositions of John F. Pickrell, taken in this cause, and state what said papers are, and whether or not they evidence the contract spoken of in your answer to the next preceding question.

Obj. Objected to by complainants' counsel, and especially to the parts thereof which ask the witness to state for what object said papers were executed, as being leading and suggestive of the answer.

A. These are the papers that contain the contract spoken of in the preceding answer.

Q. 14. State whether or not these papers were placed before the board of directors of the said company, and whether or not they were accepted by said board, and the proper officer of the company authorized to execute the same on behalf of the company.

419 Obj. Objected to by complainants' counsel as leading, illegal, and incompetent, and especially on the ground that it asks the witness to state by parol that which can only be lawfully proved by the records of the company.

A. They were, and they authorized the president to carry out the provisions of the contract.

Q. 15. State whether or not, up to the time that you ceased to be a director of the company, the road was being constructed under the provisions of the said contracts?

Obj. Objected to by complainants' counsel as leading.

A. It was.

Cross-examined by JOSEPH B. STEWART, of counsel for complainants:

Q. Where did you reside during the time you were a director of said Chatham Railroad Company?

A. In Granville county, North Carolina.

Q. 2. Where was the business office of said company during that period?

A. In Raleigh.

Q. 3. How far is Granville county, or your residence therein, from Raleigh?

A. My residence was about sixty miles from Raleigh.

Q. 4. How often and at what intervals did the board of directors of said Chatham Railroad Company convene?

A. I think every three months.

Q. 5. In what manner and in what place were these meetings convened and held?

A. They were convened and held in the office of the Raleigh and Gaston road in Raleigh.

Q. 6. Do you not know that the officers and managers of the Chatham railroad and the Raleigh and Gaston railroad were the same?

A. They were.

Q. 7. What personal interest, if any, had you in either roads?

A. I held a few shares in the Raleigh and Gaston road.

420 Q. 8. But you had none in the Chatham road?

A. I had none.

Q. 9. In what manner were the proceedings of the said company conducted; were they or not reduced to writing and entered of record, as is usual with corporations constructing, owning, and operating railroads?

A. I suppose they were, though I have but little acquaintance with the management of other railroads and corporations.

Q. 10. To be more specific, I will ask you the direct question, Do you not know that the proceedings of the Chatham Railroad Company were reduced to writing?

A. My recollection is that they were.

Q. 11. Outside of the matters brought before your board of directors and so reduced to writing, have you any personal knowledge whatever of the proceedings, contracts, or transactions of the said company?

A. I have not.

Q. 12. All that you have testified to here to-day, then, in reference to John F. Pickrell being a contractor for building, or acting for or in behalf of said Chatham Railroad Company as agent or otherwise, are such as you derived from said records, proceedings, and transactions, and not otherwise, during your attendance as a director; is that so?

A. It is.

Counsel for complainant now calls upon the defendants to produce the records of said Chatham Railroad Company showing the transactions and proceedings about which the witness has testified in his direct examination.

The counsel for defendants state that in their examination of this witness he was not asked to state the contents of any record, paper, or writing, in the possession or under the control of the company, except the two papers which have been proved and copies of which are already filed; the only questions which the defendants' counsel asked the witness were as to matters in his recollection, and
421 defendants' counsel understood the witness to speak as of his recollection in his answers to such questions, and that the facts stated by witness were facts which he recollected as having occurred or not having occurred, as the case may be, during the time he served as a director of th esaid company. As to the production of the books or minutes of the said company, they will be produced or not, as the counsel shall determine, in the progress of this cause. The counsel for the defendants are advised that the minutes of the board of directors are contained in volumes of some size, which contain much matter not connected with, or relating to, anything involved in this suit; that such books are not here present, but are at the office of the company under the control of its officers.

Counsel for complainant state that the witness having testified in his direct examination that he attended the meetings of said company as a director, and in his cross-examination that its proceedings and transactions with John F. Pickrell and others were reduced to writing by said company, and having further testified to here to-day in direct examination in reference to the transactions between the Chatham Railroad Company and John F. Pickrell, as its contractor or agent, were such as he derived from said records and proceedings as a director of said company. The complainants' counsel now asks the defendants' counsel to produce said minutes again and records, to which the witness has referred, as the best evidence in the case, or to state definitely that the defendant declines to produce the same.

The defendants' counsel makes no further answer.

Complainants' counsel, in consequence of the non-production of the said minutes and records, now states and gives notice to the defendants that complainants will move, on the hearing of this cause, to strike out the direct examination of this witness, because of the reasons stated.

Defendants' counsel claim that they have a right to re-examine the witness as to matters about which he has been interrogated
422 by complainants' counsel, and that the whole examination of the witness must be considered together, and that any motion to strike out any part of the witness' evidence is irregular and illegal, until the examination of the witness is concluded.

Complainants' counsel states, in answer to the last statement by the counsel for the defendant, that complainants are entitled to the best knowledge of the witness and the sources of that knowledge, in

order to correctly conduct their cross-examination, and which is not afforded them by the manner in which the direct examination was conducted, wherein the witness is not required to inspect and testify as to the records upon which he has stated in his cross-examination his testimony in his direct examination was founded, and especially as to the records of the defendant, and his knowledge derived therefrom as a director.

Defendants' counsel repeat that they did not ask the witness to state the contents of any record or minute of the company, but only to state facts which he remembered, and therefore it is not incumbent on them to produce any writing to which their examination did not refer.

Q. 13. When and in what manner did you become a director of the Chatham Railroad Company, in which you have stated that you had no interest?

A. I was elected by the stockholders as a directors; I think it was in 1868, but am not positive.

Q. 14. Were you present when you were elected a director of said company?

A. I was.

Q. 15. Were you not elected such director of the Chatham Railroad Company at the office of the defendant, The Raleigh & Gaston Railroad Company, and were you not elected such director because you were a director of the Raleigh & Gaston Railroad Company?

A. I was elected a director of the Chatham Railroad Company at the office of the Raleigh & Gaston Railroad Company, and I
423 suppose was elected a director of the Chatham Railroad Company because of being a director of the Raleigh & Gaston Railroad Company.

Q. 16. Do you not know that the officers and directors of the two companies were the same?

A. Yes, sir; I think they were.

Q. 17. Do you not further know that the Chatham railroad was but an extension of the Raleigh & Gaston railroad, and was, in fact, practically owned and controlled by the last-named company?

A. Practically it was the same. The Raleigh & Gaston road owned the controlling interest in the Chatham road, but they were separate and distinct corporations.

Q. 18. You have stated that the meetings of the board of directors of the Chatham Railroad Company were once in three months, at which you usually attended. Will you now please state in all how many meetings you did attend?

A. I don't recollect.

Q. 19. As there could not have been more than four a year, and supposing you to have been elected about July, 1868, could you have attended more than six regular meetings of said company?

A. I don't think I did.

Q. 20. Have you ever read yourself and personally inspected all the records, contracts, orders, and agreements made and entered into by the said company during the time you were a director of said

company, so that you are able to remember and state precisely what the said records do or do not contain as to matters of contracts and appointments of agents for said Chatham Railroad Company, or on account or in behalf thereof?

A. I have not.

Q. 21. You have stated that you do not and never did know John F. Pickrell, but did know Whitford and Hawkins. Will you now please state what connection, if any, the said Whitford and Hawkins had and maintained to the said Chatham Railroad Company, or the one with the other in reference thereto?

424 A. Hawkins was president of the company. If Whitford ever had any interest or connection with the company I am not aware of it. I think I have heard that Whitford acted as agent for Hawkins in the sale of some North Carolina State bonds in New York.

Obj. Latter part of this answer objected to by defendant's counsel, as mere hearsay and irrelevant.

Q. 22. Do you not know that the North Carolina State bonds that Whitford sold as agent for Hawkins, president, were bonds issued by the State of North Carolina to the said Chatham Railroad Company. Please answer this question to the best of your knowledge and belief.

Obj. Question objected to by defendants' counsel, because it assumes that Whitford sold bonds, whereas the witness only stated that he had heard that Whitford was agent to sell; further, the question assumes that Whitford was agent for Hawkins as president, whereas the witness only spoke of him as agent for Hawkins; and, third, the question calls for mere matter of rumor and hearsay.

Complainants' counsel states that the witness was asked to state the relation of Hawkins and Whitford to the Chatham Railroad Company, or the two to each other in reference thereto; he answered that Hawkins was president, and that he was informed that Whitford was appointed agent by Hawkins to sell North Carolina State bonds in New York, which included Hawkins as president of the Chatham railroad, if said bonds were the property of the said Chatham Railroad Company, and is therefore strictly within the line of witness' previous answer, and does not assume anything not warranted thereby.

A. I don't know that Whitford ever sold a bond, only what I have heard.

Q. 23. You have spoken of certain bonds of the State of North Carolina which Hawkins appointed Whitford agent to sell in New York. Do you not know that the said North Carolina State bonds were those issued to the Chatham Railroad Company by said

425 State, under an ordinance passed by the convention of said State early in the year 1868, and an act of the Legislature passed on the 15th of August, 1868, and if you say such were not the bonds so authorized to be sold, please state and describe what other bonds you referred to.

A. I suppose they were the bonds of the Chatham railroad, but I don't know it.

Obj. Answer objected to by defendants.

Q. 24. Did not the Chatham Railroad Company, of which you have testified you were a director in the year 1868, during that year receive three million two hundred thousand dollars of bonds to be used in the construction of its road from the State of North Carolina?

A. I don't recollect the amount, but I suppose you are correct.

Q. 25. Do you state that you, as a director of said Chatham Railroad Company, do not know whether said company received three million two hundred thousand dollars of State bonds for the construction of its road, and that you do not know in what manner the said bonds were disposed of? Please state your fullest and best information on the subject.

A. I don't recollect the exact amount appropriated by the State of North Carolina to the Chatham railroad, but know that the most of the amount appropriated went to the construction of the same.

Q. 26. Your answer does not meet my question, which is not as to the application of proceeds, but as to the manner, by what authority, when, and by whom appropriated, that is, was it by an order of the board of directors; second, was it by Hawkins as president; third, was it by Whitford, agent; fourth, was it by Pickrell, either as agent or contractor, or if neither, then state by whom, to the best of your knowledge and information, derived as a director of the said company and in what manner the same was derived? As to the application of the proceeds of said bonds, I will ask about that hereafter.

426 A. They were sold by authority of the directors. I think Hawkins made a contract with Pickrell and that he, Pickrell, sold the bonds.

Q. 27. In what manner did the directors authorize Hawkins to sell the bonds, or to make a contract with Pickrell, and was such authority reduced to writing and approved by the board of directors?

A. They authorized Hawkins to take sixty cents in the dollar, and the contract was reduced to writing. He was authorized by an action of the board. That authority was not reduced to writing.

Answer excepted to by complainants' counsel, as not responsive to the question, and question repeated.

A. The board of directors issued an order to Hawkins to dispose of the bonds. They authorized Hawkins to contract with Pickrell by an action of the board. It was reduced to writing, and approved by the board of directors.

Q. 28. Have you in your possession, and will you produce as part of your answer, the original or a copy of said resolution, or order, authorizing Hawkins to so dispose of said bonds, or to contract with John F. Pickrell?

A. I have neither the original nor a copy; I don't know whether I can produce a copy or not, but I suppose I can.

Complainants' counsel now calls upon the defendant company to produce the said original resolution, or order, authorizing the said Hawkins to sell the said bonds or to contract with the said John F. Pickrell, as stated by the witness in his examination.

In response to the call of the plaintiffs, through their solicitor, as above made, for the resolution or writing referred to by the witness in his cross-examination, or copies thereof, the defendant company now produces and files a paper maked "Exhibit C. H. K. T., No. 1," and annexes the same hereto as part of this deposition, which defendants' counsel are advised by their client is the resolution referred to by witness, giving authority to said Hawkins to sell
427 said bonds, and approving the contract made by said Hawkins with said Pickrell, subject to the approval of said board of directors of said company. And they are further advised by said defendant company that their minutes contain no resolution directing said Hawkins to make a contract with said Pickrell.

Q. 29. When did you first see and read the paper styled a proposal, "Exhibit C. H. K. T., No. 1," now produced by the defendant and made part of your answer, which said proposition is dated New York, Sept. 1st, 1868?

A. Last Tuesday was the first time I ever read it. I heard it read at the meeting of the directors in 1868, when it was approved.

Q. 30. Do you know the handwriting of said paper?

A. I don't know Pickrell's handwriting; I know Hawkins'.

Q. 31. By what means or in what manner do you know it to be the same paper read to your board of directors after a lapse of ten years; and was there no other paper read on the same subject?

A. I only know it from the recollection of its contents, after hearing it read, and Hawkins' handwriting; I have no recollection of any other paper at that time.

Q. 32. Was there any other contract or agreement touching the said proposal read to and approved by your board of directors other than that dated New York, Sept. 1st, 1868?

A. I have no recollection of any other.

Q. 33. The first paragraph of said proposal reads, in part, as follows: "1st. To contract to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all materials for same at your engineer's estimates." Do you know and can you state that any such estimates ever were furnished by the engineer of your said company, and that any contract ever was made pursuant thereto, as described in said proposal?

A. I have no recollection of any estimates being made. There was a contract made in 1869, but whether it was pursuant to these estimates or not I do not know.

428 Q. 34. If your engineer never made any estimates pursuant to and as described in said proposal, will you please state upon what ground or basis said contract of 1869, of which you have now spoken, was predicated?

A. I suppose that there was an estimate made, and that it was predicated upon those estimates.

Q. 35. I ask you, not for your supposition, but for your personal knowledge as to whether any estimates ever made by the engineer of the Chatham Railroad Company and submitted to John F. Pickrell, as stated in said proposal, and upon which estimates any contract was predicated between John F. Pickrell and the Chatham Railroad Company for building its road?

A. I only know what I have stated before, that all I knew about this matter was what I had learned as a director of the Chatham road. I know nothing of my personal knowledge of the question asked.

Q. 36. The resolution at the conclusion of the C. H. K. T., No. 1, ratifying said proposal, reads as follows: "On motion, the directors approved and ratified the foregoing agreement." Do you know of your own knowledge of the passage of that resolution?

A. I do.

Q. 37. Do I understand by the statement introducing said Exhibit C. H. K. T., No. 1, that the resolution last above quoted is the only one passed by your board authorizing any contract to be executed by said Hawkins, as President, with said Pickrell for the building of said Chatham road?

A. I do not recollect. My impression is, in fact I am certain, that there never was any authority given to Hawkins to make any contract with Pickrell.

Obj. Defendants' counsel object to this question, for the reason that it assumes that the resolution referred to was an authority to the president of the company to make a contract with said Pickrell, whereas it is only an approval of a proposition made to the
429 president by Pickrell and accepted by the president, subject to the approval of the board, and it was stated that there was no resolution of the board passed previous to the making of said contract directing the president to make any contract with Pickrell.

Q. 38. During the time that you were a director of the said Chatham Railroad Company did you ever see or speak to John F. Pickrell as a contractor for building the road of said company, or any agent or subcontractor of his acting in that behalf? And if you say you did, please state when it was or who it was and all about it, to the best of your knowledge and recollection.

A. I never say Pickrell or any of his agents that I recollect.

Q. 39. Will you now please state who, to your knowledge and information, did conduct the work on said Chatham railroad during the time you were a director of said company?

A. I think Dr. Hawkins had the management of the works.

Q. 40. Do you not know that the bonds of the State of North Carolina, issued to the Chatham railroad and placed in the hands of the said Hawkins as its president for negotiation, were excluded from the stock board of New York as being illegally issued on or about the 2d day of December, 1868, and ceased thereafter to be saleable in the market as a valid security?

A. I do not recollect it.

Q. 41. During the time you were a director of said company, do you know and did you ever see any account or statement presented by John F. Pickrell for work and labor done by him or any one acting for him or his agent under said proposal of the 1st Sept., 1868, or any proposal or agreement for building said Chatham railroad?

A. I don't recollect that I ever did.

Q. 42. Do you know how or in what manner or upon what statement of account or by whom and when stated the Chatham Railroad Company did pay for the work and labor done on said Chatham railroad while you were a director of said company;

430 and, if you please, state in whose name said account for work for labor was presented, by whom presented, and in what manner the said account was paid and disposed of, to the best of your knowledge and recollection?

A. It has escaped my recollection entirely.

Q. 43. What amount of work, if any, was done upon the Chatham railroad previous to September, 1868, within your knowledge?

A. I don't recollect the amount, but I think there was a good deal.

Q. 44. You have spoken in your direct examination of an agreement dated March 6th, 1869, and signed "W. J. Hawkins, president C. R. R. Co.," and "John F. Pickrell & Co." Will you now please look again at said paper and state in whose handwriting the same is, and when you first saw and personally read said paper?

A. It is Hawkins' signature. I don't know whose handwriting the body of the instrument is. Tuesday, the 17th inst., was the first time I ever read it. I heard it read at the meeting of the directors.

Q. 45. At what meeting did you hear it read?

A. March, 1869.

Q. 46. You have stated that there was no authority conferred by the board of directors upon the said Hawkins empowering him to make any contract with John F. Pickrell for building the Chatham railroad. I will now ask you to state whether, by your former testimony, you meant to say that said agreement of 6th of March, 1869, was executed without the authority of the board of directors at the time it was done?

A. My impression is in September, 1868, there was some authority given Hawkins to make a contract subject to the approval of the board, and it was approved in March, 1869.

Q. 47. What time in March, 1869, was said contract approved—I mean the alleged agreement, dated March 6th, 1869, described as exhibit P. in the deposition of John F. Pickrell?

A. I don't recollect the date.

431 Q. 48. Do you not know that previous to the 6th of March, 1869, the date of the alleged agreement, that the supreme court of the State of North Carolina had pronounced the act authorizing the issue of said bonds, dated the 15th day of August, 1868, and the act supplemental thereto, dated the 18th day of September, 1868, to be unconstitutional and void?

Obj. Defendants' counsel object to the above question, on the ground that it involves a question of law, and the witness cannot answer thereto unless he be an expert; and he has not qualified himself as an expert.

Complainants' counsel states that the witness is not asked to testify as to the legal effect or validity of such decision whereby the attainments of an expert if required to answer it, but he is asked to state simply as to the fact is it is not a matter of public notoriety and general statement that such decision had been made previous to the 6th of March, 1869, by the supreme court of North Carolina.

A. I think there was such a decision by the court, as well as I recollect, in reference to a portion of those bonds. All of them were not declared to be unconstitutional and void.

Q. 49. Referring again to the meeting of the board of directors of said Chatham Railroad Company, might there not have been, and were there not, special meetings convened at which you were not present?

A. There were.

Q. 50. Do you not know that in point of fact that the power to dispose of said State bonds was vested in said Hawkins, as president of said company, to deal with in such manner as he might select on the part of said company, and that no special instructions ever were in reality given him by the board of directors, who approved his acts when done?

A. Hawkins only had power to dispose of the bonds subject to the approval of the board of directors, as I understood it.

Q. 51. Did not your board of directors approve the manner in which said Hawkins did dispose of said bonds and apply the proceeds thereof?

A. I think they did.

432 Re-examined:

Q. 1. How far did you reside from the president of the company during the time you were a director, as before stated?

A. Some 12 or 15 miles.

Q. 2. During the period you were a director, state whether or not you were intimately acquainted with the business of the two companies and with the manner in which it was transacted and conducted.

A. At that time I was.

Q. 3. State whether or not you have any personal recollection of the matters of fact stated in you examination-in-chief, or did you intend to speak in such examination only from what the minutes and papers of the company contained, and not from your memory of the matters as they occur?

Question objected to by complainants' counsel generally as illegal, because leading and incompetent, and specially on the ground that the witness has defined the source of his information as having been derived by him from the records and proceedings of the company as a director thereof, and not otherwise, and that such records

being the highest and best evidence, it is not legal or competent to substitute his memory in the place thereof, and especially after a lapse of time now of nearly 12 years.

Defendants' counsel states that the examination-in-chief of the witness was as to his knowledge of the facts stated by him, and not as to the statement of any of the matters in any writing, and the witness having been cross-examined as to the basis on which his evidence-in-chief was founded, which was new matter introduced on cross-examination, the defendant has the right to re-examine the witness as to this, and to show by the witness the extent of his recollection of the facts deposed to by him in his examination in chief.

The complainants' counsel further states as special gaounds of objection to the question, and in answer to the statement made by defendants' counsel, that the witness, having disclosed upon his
433 cross-examination that his knowledge of the matters testified to were derived in his capacity as director from the records and archives of the Chatham Railroad Company, thereby disclosing a higher and better basis of knowledge and evidence than his personal recollection, has no right to substitute the latter for the former, as said records are the best evidence, which, by operation of law, at once excludes the right of the witness to further testify as to the transactions therein contained, as said records and writings should be presented and speak for themselves, and that said records being in the possession of the defendant company, and can be by it produced if it chooses to do so, the witness should not further testify as to his recollection in reference thereto.

Defendants' counsel, in reply to plaintiffs' last objection, state that as to most of the examination-in-chief of this witness, his evidence consists of denials of allegations of facts made by complainants, and being negative in its character, and showing the non-action of the company, it naturally would not appear on the minutes of the board, and does not appear that as to the written evidence about which the witness was examined-in-chief, the two written contracts themselves were produced and the minutes of the board of directors called for by complainants' counsel in reference thereto, have been produced and filed as exhibit in this cause. The examination now is as to new matter in the cross-examination, and to show how far the witness in his examination-in-chief spoke from his own memory of the facts, and not from the papers of the company.

A. I intended to speak from my recollection of the record.

Q. 4. From what did you intend to speak as to matters not appearing on the record?

Question objected to, as it assumes matters testified to in reference to the transactions of said company, in the matter of making contracts and disbursing its funds, that are not of record without producing such record to the witness whereby to verify the same, or show what the record is, and for the further reason that when
434 a record of the company is shown to exist the witness' recollection of what it does or does not contain is not evi-

dence, as he can neither diminish nor enlarge the record by parol evidence.

A. From my memory.

Q. 5. Are not the two companies, the Raleigh & Gaston Railroad Company and the Raleigh & Augusta Air-Line Railroad Company, separate and distinct corporations, organized under different charters, and with different stockholders, as to many of them?

Question objected to, as leading.

A. Yes.

Q. 6. In your answer to cross-interrogatory 26 you state "I think Hawkins made a contract with Pickrell, and that he, Pickrell, sold the bonds." State whether or not, in your knowledge, Pickrell ever sold any of the bonds referred to for or on account of the company defendant, and if you know of his selling bonds, state on whose account he sold.

Question objected to generally and specially, as being leading and calling upon witness to vary and contradict his testimony as positively given.

A. I never did.

C. H. K. TAYLOR.

Sworn and subscribed to before me, this 19th day of February, 1880.

T. R. PURNELL,
Special Examiner.

Adjourned to Friday, February 20th, 1880, at ten o'clock a. m.

T. R. PURNELL,
Special Examiner.

435 EXHIBIT C. H. K. T., No. 1.

Copy of the minutes of the board of directors of the Chatham Railroad Company, held on the 4th of Sept., 1868, relating to contract with John F. Pickrell & Co.:

Resolved, That the president of the company will deliver to the public treasurer of the State of North Carolina the mortgage duly executed and prepared according to the acquirements of the act of the Legislature, ratified 15th day of August, 1868, as also the bonds of this company required by said act, and receive from the said treasurer of the State two millions of bonds of the State of North Carolina, and negotiate the sale of a part, or the whole amount of said bonds, to the best interest of the company.

The president submitted to the board the following conditional agreement or contract with John F. Pickrell and associates, of New York, to wit:

NEW YORK, *Sept. 1st*, 1868.

To the president of Chatham Railroad Co., W. J. Hawkins, Esq.:

SIR: In behalf of myself and associates, viz., Messrs. Greenleaf, Norris & Co. and Chas. Gould, Esq., I propose as follows:

1st. To contract to do the entire work on your road, such as grading, superstruction, bridges, masonry, &c., &c., and to furnish all the materials for same as your engineer's estimates, provided they are not less than is allowed for similar work on the Western North Carolina road.

2d. The above is based upon my having the contract to supply your road with all iron required; also locomotives, spikes, chairs, and equipments generally at prices to be agreed upon between us, as soon as the condition of your company will permit of the making of such contract.

3d. In accordance with our various conversations whilst you were here, I further agree and propose to accept your State bonds, at prices to be fixed by us, for all supplies contained in propo-
436 sition No. 2, and further to loan and supply you with all the money you shall require from time to time for the purposes of your operations in building and equipping your road.

(Signed in duplicate) JNO. F. PICKRELL,
For Self and Associates.

(Endorsed:) Accepted subject to the approval of the board of directors. (Signed) W. J. Hawkins, Pres. C. R. R. Co.

On motion, the directors approved and ratified the foregoing agreement.

A true copy from minutes.

W. W. VASS,
Secretary, &c.

437 FRIDAY, *February 20th*, 1880.

Met pursuant to adjournment.

Present: Counsel as before.

JOSEPH B. LITTLEJOHN, a witness produced by the defendants as above, being duly sworn, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. Joseph B. Littlejohn; age, sixty-two; Warren county, North Carolina; farmer.

Q. 2. Have you any knowledge of the Raleigh & Gaston Railroad Company, and the Raleigh and Augusta Air-Line Railroad Company (formerly the Chatham Railroad Company), and are you acquainted with William J. Hawkins, John D. Whitford, and John F. Pickrell, the defendants in this action?

A. I know the roads and persons named, except Pickrell. Have no personal acquaintance with him.

Q. 3. State whether or not you had any connection with either of the said companies during the years 1868 and 1869; if yea, state what that connection was.

A. I did have connection with both those roads during the years 1868 and '69. I was director on both roads during that time.

Q. 4. State when and how you were first appointed director of the Chatham Railroad Company, and how long you continued to act as such director?

A. To the best of my recollection, I was elected by a vote of the stockholders in 1868. I had previously to that time been appointed a director by the Governor. I served during the year 1869; I am not positive that I served after that year.

Q. 5. State whether or not you generally attended the meetings of the board of directors of the said company.

A. I was generally present.

Q. 6. State whether or not the said John F. Pickrell was, at any time during your connection with the said railroad company as director, appointed agent of the said company for any purpose whatsoever.

438 Obj. Question objected to by complainants' counsel, as illegal and incompetent, and especially objectionable if it shall appear in the further examination of the witness that the said Chatham R. R. Co. kept and preserved records showing their transactions including such appointment of agents.

A. Never to my knowledge.

Q. 7. State whether or not the said Pickrell, during the period referred to in the previous question, had any authority from said company to make any contract, as its agent, for the purchasing of iron or anything else for said company.

Obj. Question objected to by complainants' counsel specially and generally for the reasons before stated.

A. He had not to my knowledge.

Q. 8. State whether or not your answers to the two preceding questions are given on your personal knowledge and recollection of the matters therein stated or otherwise.

Obj. Question objected to by complainants' counsel as leading and otherwise incompetent.

A. They are based on my personal recollections and transactions of the board pertaining to it.

Q. 9. State whether or not there is any writing or minute of the board of directors of said company appointing said Pickrell agent for said company, or giving him authority to contract for said company.

Obj. Question objected to by complainants' counsel, as illegal and leading, and for the further reason that if the Chatham Railroad Company kept a record and written minutes of its proceedings, that such minutes and record must be presented as the best and only evidence of their contents, and it is not competent for the witness to testify orally in reference thereto.

A. There is not, to my knowledge.

Q. 10. Who was president of the said Chatham Railroad Company from the time you were elected director in 1868 up to the time you ceased to act as director?

A. Dr. William J. Hawkins.

439 Q. 11. State whether or not the president of the company had any authority to purchase iron for the company or to

appoint an agent for that purpose without the knowledge and consent of the board of directors.

Obj. Question objected to by complainants' counsel, as the authority of said Hawkins as president of said Chatham Railroad Company must be derived from and shown by its charter and by-laws which are existing records, and for the further reason that such matters being of record must speak for themselves, and cannot be established or contradicted by oral testimony.

Ans. He did not, to the best of my knowledge and belief.

Q. 12. State whether or not the board of directors of said company, while you were a director, gave to the said Hawkins, as said president, any authority to appoint the said Pickrell its agent for the purpose of purchasing iron for on behalf of said company, or for any other purpose.

Obj. Question objected to by complainants' counsel for reasons before stated.

A. It did not to my knowledge.

Q. 13. State whether or not it was ever reported to the board of directors of said company, while you were a director, by said Hawkins, president, or by any other person, that said Pickrell had been appointed agent for said company for the purpose aforesaid, or had assumed to act as such agent for said company in that behalf.

Obj. Question objected to by counsel for complainants for reasons before stated.

A. He never had been appointed, nor did I ever hear a report to that effect. He never did assume to act as agent of the company to my knowledge.

Q. 14. State whether or not the matters of fact stated in your answers to questions No. 11, 12, and 13 are stated on your personal knowledge and recollection of the matters stated or otherwise.

440 Obj. Question objected to by complainants' counsel, as leading, incompetent, and immaterial, and for further reason that if the said Chatham Railroad Company kept a record of its proceedings that the personal recollection and oral testimony of the witness is not admissible for any purpose.

A. They are based on my personal recollection of the matters referred to.

Q. 15. State if you have any knowledge whether or not there was any contract made by the said company with any person or persons for the building, equipping, &c., of its road: and, if yea, who was the contracting party?

A. I did have knowledge that there was such a contract. The contracting party was John F. Pickrell.

Q. 16. Look at the papers now shown you, copies of which have heretofore been filed as evidence in this cause, marked Exhibit P., No. 3, and Exhibit P., No. 17, attached to the deposition of John F. Pickrell, and state all you know concerning the same.

A. To the best of my recollection this agreement that was made Sept. 1st, 1868, when submitted to, accepted and approved by the board, I was not present (this is Exhibit P., No. 3). In regard to the other paper, called Exhibit P., No. 17, dated March 6th, 1869, I was, to the best of my recollection, present when it was submitted to and approved by the board.

Obj. Answer objected to by complainants' counsel in all that relates to P., No. 17, wherein it states that the said agreement was presented to and approved by the board of directors, for the reason that such approval must be shown by the records and minutes of the company, and cannot be proven by parole.

Q. 17. State whether or not the said paper, Exhibit P., No. 17, was approved by resolution or vote of the said board; and, if yea, whether or not the paper writing now shown you, marked Exhibit J. B. L., No. 1, is a copy of such vote or resolution.

441 A. It was submitted and approved, and the paper marked "J. B. L., No. 1," is a true copy of such resolution, to the best of my knowledge and belief.

Q. 18. State whether or not, up to the time you ceased to be a director of said company, the road of said company was being constructed; if yea, by whom, and under what contract.

Obj. Question objected to by complainants' counsel.

A. It was being constructed, and had been constructed to Sanford before I ceased to be a director, under the contract of 6th of March, 1869, by Pickrell and Company, under the supervision of the president of the company.

Cross-examined by JOSEPH B. STEWART, of counsel for complainants:

Q. 1. You say you were a director of the Chatham Railroad Company, by appointment, previous to your election by the stockholders in 1868. I now ask you, as such director, to state what amount of work was done on the said Chatham road previous to your election by the stockholders.

A. I cannot recollect. It was under the entire supervision of Dr. Hawkins. The only time I recollect going up the road was after it was completed to Sanford.

Q. 2. About what time was it completed to Sanford?

A. I cannot recollect the time.

Q. 3. Now, if you cannot recollect the amount of work done on the road up to 1868, or the time when you visited Sanford, after its completion, how are you able to recollect the contents of the written paper, "P, No. 17," now nearly twelve years old?

A. I recollect it from the circumstance of its being a pretty considerable job, and from its being spoken of at meetings of the board afterwards.

Q. 4. Did you ever read "Exhibit P., No. 17," being the alleged agreement of 6th March, 1869, until you read it on this examination?

A. I did.

Q. 5. When and where did you read it?

A. At the office of the company on the minutes of the board.

442 Q. 6. You still do not state when. Will you please answer as to the time?

A. I think it was last Tuesday when I was first called here. This was the first time I ever read it.

The witness here makes an explanation, and says that he did not understand the question. He says he thought the question meant when did he first read it after he was summoned. He now answers that he cannot recollect when he first read it. He further says that he has not a doubt that he read it when it was submitted to us and approved.

Q. 7. Do you know if you read it when it was submitted and approved?

A. I am satisfied of that fact.

Q. 8 The alleged contract purports to be dated March 6th, 1869. Is that the time you read it?

A. I presume I read it at the time that it was submitted to the board and approved by us.

Q. 9. Do you know that that was the time? Please state your knowledge, and not what you presume.

A. I think I can say that I know it, from this fact, that when papers of importance were submitted to the board they were generally examined by us before approved.

Q. 10. Do you know the date your board approved said contract, "Exhibit P., 17"?

A. It was '69; whether July or September, I cannot recollect; I think one of the two. I am not positive as to date; I can only recollect that it was 1869.

Q. 11. You have stated, in your examination-in-chief, that said Hawkins had no authority, as president, to make contracts or appoint agents for the Chatham Railroad Company, except as authorized and approved by the board of directors. Was that so, in point of fact?

A. It was, to the best of my knowledge and belief.

Q. 12. And you have also stated that the work done on said

443 Chatham railroad up to Sanford was under the said alleged contract of 6th of March, 1869. Is that true, in point of fact?

A. It is, to the best of my knowledge and belief.

Q. 13. Is the said contract "Exhibit P., No. 17," the only contract made within your knowledge between the Chatham Railroad Company and John F. Pickrell or John F. Pickrell & Co.?

A. The only one that I know of relative to the thirty miles of road or the distance to Sanford.

Q. 14. One of the paragraphs of the alleged contract, Exhibit P, No. 17, dated March 6th, 1869, reads as follows: "The work above mentioned and rolling-stock, &c., are to be finished and delivered on or before the first day of August, 1869," while the resolution approving the same to which you have referred reads as follows:

"Meeting of the board July 6th, 1869. The president submitted to the board the following contract entered into with Messrs. J. F. Pickrell & Co., of New York, which was approved and ordered to be entered upon the minutes." Do I understand you to say and testify here that your board of directors approved a contract with said Pickrell & Co. for the construction of thirty or forty miles of railroad at a cost of six hundred and eleven thousand dollars, to be paid therefor within five days of the time when said contract would expire by its own limitation; and, if yea, will you please explain upon what principle such a transaction was made—that is, the approval of such a contract within five days of its expiration?

Obj. Defendants' counsel object to such part of the foregoing question as requires the witness to state upon what principle such a transaction was made.

A. I have to say that that contract was submitted and approved, to the best of my knowledge and belief, according to this exhibit. I cannot answer the latter part of the question.

Q. 15. As you have stated in your direct examination that no contract was binding on the Chatham Railroad Company until
444 approved by its board of directors, do you mean to fix the date of such approval, to wit, July 6th, as the time when the same took effect and became obligatory on said company and said Pickrell as contracting parties?

A. I mean to fix the date according to Exhibit J. B. L., No. 1.

Q. 16. Your answer evades my question, which I will now modify into this form: Do you mean to say that the date of the approval of said contract, to wit, the 6th of July, 1869, is the time when the same became obligatory upon the contracting parties, to wit, the Chatham Railroad Company and John F. Pickrell?

A. I stated before that I could not recollect exact dates, and that my recollection is based on this exhibit as to this matter.

Obj. Answer excepted to, as not responsive to the question.

Q. 17. Independent of said Exhibit J. B. L., No. 1, made part of your examination, you have no knowledge on the subject of said contract; is that so?

Obj. Defendants' counsel object to the question, because it is based on the assumed fact that the witness has no knowledge of the contract referred to, whereas the witness has stated and repeated that he did recollect that was approved by the company, although he could not recollect the exact date of such approval.

Counsel for complainants states that by the 15th and 16th questions preceding he brought to the attention of the witness the Exhibit J. B. L., No. 1, which, among other things, contains the resolution of the board of directors, dated July 6th, 1869, approving the alleged contract dated March 6th, 1869, which the witness had sworn was correct; and when further asked as to whether that was the date when the contract became obligatory between the Chatham Railroad Company and John F. Pickrell on that date, answered as follows: "I stated before that I could not recollect as to exact dates, and

that my recollection is based on this exhibit as to this matter." Whereupon question No. 17 is now propounded, and to which the witness is asked to give a direct answer.

445 Counsel for defendants state that by answer to question 16, the witness is understood to mean, when he says that his "recollection is based on this exhibit as to this matter," that he refers to the exhibit as to the date alone of the approval of the contract. If this is not so, the counsel ask that the witness be allowed to explain.

Counsel for the complainant protests against the counsel for the defendants construing or giving a meaning to the answer of the witness to question 16, the language of which answer is clear and distinct, and the interpretation thereof is a matter for the court, and objects to any explanation thereof by the witness upon his cross-examination, and counsel for complainants further states that the date and ratification of the alleged contract, Exhibit P., No. 17, as given in deposition of Pickrell between him and the Chatham Railroad Company, is the identical point that complainants' counsel was seeking to arrive when the witness predicated all his knowledge of the matter enquired of upon his Exhibit J. B. L., No. 1, and hence the propounding of question No. 17.

Counsel for defendants only say that there appearing to be a difference of understanding as to the answer of witness to question No. 16, they ask that the witness may be allowed to say what his answer was to that question.

A. No; that is not so. I had reference entirely to the date in answering question 16.

Q. 18. In using the word "date" in your last answer, I again ask you if you mean to state as the resolution of July 6th, 1869, shows that that was the time that the said contract, Exhibit P., No. 17, took effect by ratification and became obligatory between the Chatham Railroad Company, on the one part, and John F. Pickrell or John F. Pickrell & Co., on the other? Will you please give me a direct and positive answer to this question?

A. It is according to this exhibit.

Q. 19. The contract between Pickrell & Co. and the Chatham

446 Railroad Company, as shown by your last answer and said Exhibit J. B. L., No. 1, having been ratified and approved on the 6th day of July, 1869, will you please state whether any work was being done on the road of said company previous to and up to the 6th day of July, 1869; and, if yea, be so good as to state by and under whose supervision such work was being done, or was done previous to the ratification of said contract?

A. I am not prepared to answer that question, except by stating that some time during that spring or summer the directors made an excursion about thirty miles up the road near Haw river, and work was being done on the bridge across Haw river. The work was being done on the bridge by the company under the supervision of the president.

Q. 20. By the term excursion up the road, do I understand you

to say that the cross ties and rails were laid and that cars ran over the road up to Haw river?

A. I would answer by saying that the exact distance we went up the road I can't exactly recollect now, but I am of opinion it was within a few miles of Haw river. I recollect that at the point where we left the road some of the company took carriages and went farther on.

Q. 21. Now, confining your attention to the statement in your last answer as where the road was completed near Haw river, will you please state under whose supervision and direction that portion of the work was done on said Chatham road? Was it done under the supervision of Dr. Hawkins; and, if not, under whose supervision was it done?

A. I don't know that I know that fact.

Q. 22. Do you state that you, as a director of said Chatham Railroad Company, while testifying in reference to the contracts for building its road and the actual construction thereof up to or near Haw river, as stated in your former answers, are not able to state by or under whose surpervision such work was done?

A. As I stated before, I have not a clear idea about it.

Q. 23. Can you name any one who, within your knowledge,
447 did perform or supervise said work; and, if yea, will you please give the name of such person?

A. I cannot. I never was on the road but once, and that was the time of the excursion.

Q. 24. During the construction of that road, of the portion thereof you have described, who, if any one, presented to the board of directors, of which you were a member, any estimates, surveys, or accounts for material and labor furnished and performed in the construction thereof?

A. Such a length of time has elapsed since then that I only recollect of Col. Sanford being present at meetings of the board of directors with surveys, but whether of bridges alone or of bridges and road I cannot now say.

Q. 25. But, nevertheless, there was some one, was there not, who supervised the work on said Chatham road, and received from the company and disbursed the pay therefor, and signed the vouchers upon which such payment was made for such labor and material? Can you not state who that was from your position as a director at the time it was done?

A. I can only state this, that vouchers are filed with the treasurer generally; but I have no knowledge personally of the matter referred to.

Q. 26. Then you have, in reality, no knowledge yourself by and under whose supervision said work was done in the construction of said Chatham railroad previous to the ratification and approval of the alleged contract with Pickrell & Co., on the 6th of July, 1869; is that so?

A. I have no clear idea about it, but I presume it would be under the supervision of the president.

Q. 27. You say you presume it was done under the supervision of

the president, W. J. Hawkins. Upon reflection, do you not know it was done under the supervision of the said president?

A. I do not know that.

Q. 28. Then, in reality, you do not personally know anything about it; is that so?

448 A. I can answer that I know this, that work done on the road was generally done under the supervision of the president, as, for instance, in the case of the contract between Pickrell and the Chatham Railroad Company.

Obj. Answer excepted to, as beyond the call of the question and all that portion thereof after the words "as, for instance, in the case of the contract between Pickrell and the Chatham Railroad Company."

Q. 29. You have repeatedly, and in answer to several questions, sworn that the Pickrell contract, so-called, was not approved and ratified until the 6th day of July, 1869, when it became obligatory between the contracting parties. Do you by your last answer, wherein you use the language "as, for instance, in the case of the contract between Pickrell and the Chatham Railroad Company," mean to say that work was done under that contract before it was ratified and became obligatory upon the contracting parties, under the supervision of the president, Wm. J. Hawkins? Will you please give me a direct and distinct answer to this question?

Obj. Defendants object, because the question assumes that the witness has testified that no contract existed between Pickrell and the Chatham Railroad Company for building its road, or any part thereof, by said Pickrell prior to the 6th of July, 1869, whereas the witness has only testified that the contract ratified July 6th, 1869, is the only contract of whose ratification he has personal knowledge, and has not testified that a former contract did not exist.

Complainants' counsel states that the several answers of the witness has shown that William J. Hawkins, as president, nor any one else, had any authority to make any contract, or appoint any agent authorized to bind the Chatham Railroad Company, unless authorized and ratified by the board of directors; that he knew nothing of the proposal dated Sept. 1st, 1868; that the alleged contract dated March 6th, 1869, between Pickrell and the company was the only one of which he had any knowledge, and that that contract

449 was not ratified by the company until the 6th day of July, 1869, just five days before it would expire by the terms of its own limitation, and that all the work that was done and performed under that contract while he was a director up to, first, Sanford, a distance of about forty-three miles, and then modified his statement to at or near Haw river, and that all the work done on said road was under the supervision of said Hawkins, the president; wherefore the counsel for the complainant protests against the terms of the objection interposed by defendants' counsel suggesting to the witness that work was done under another and different contract than that sworn to by the witness, and to which he has strictly confined his knowledge by the terms of his positive testimony.

A. I do not. I merely refer to that case or the contracts between Pickrell and the Chatham Railroad Company to show that such work was done under the supervision of the presiden of the company. Work was not done—

Counsel for complainant requests the examiner to note the fact that after the witness had answered the first part of the question he requested the examiner to read the latter part of it involving an inquiry as to whether the work was done under the alleged Pickrell contract of the 6th of March, 1869, before it became obligatory by the ratification of the directors on the 6th of July, 1869, and proceeding to answer the same, said, "Work was not done under the contract," and stopped by the interruption of defendants' counsel stating that the witness had given his answer, and complainants' counsel now requests the examiner to instruct the witness to proceed from where he left off and give his answer to the latter part of said question.

Defendants' counsel says the witness had said, as recorded by the examiner, "work was not done," and no farther, he was not interrupted by defendants' counsel. The witness may close his sentence if he he sees fit, or may not, and the defendants' counsel have no objection to either course; but the examiner has no right to instruct the witness whether he shall proceed further in his answer or not.

450 The examiner repeats the question to witness and asks him if he will answer the question or complete the sentence commenced?

A. I have answered the first part of the question. I do not mean to say that work was done before the contract was ratified.

Q. 30. Will you please state under what contract, if any, and under whose supervision, work was done under said Chatham Railroad between the 6th of March and the 6th of July, 1869, the date of the ratification of the alleged contract between the company and the said Pickrell?

Ans. I think I can state this, that I presume it was done under the former contract between Pickrell and the Chatham Railroad Company, and under the supervision of the president, W. J. Hawkins, though, as I have before stated, I was not present at the meeting of the board of directors when that first contract was ratified.

Answer excepted to as not responsive to the question, and for the further reason that the witness merely gives his "presumption," and not any matter of fact within his knowledge, as to any contract under which said work was done previous to the 6th of July, 1869.

Q. 31. The alleged contract dated the 6th of March, 1869, which was not ratified by the board of directors until the 6th of July thereafter, expired by its own terms just twenty-five days after its ratification, to wit, on the 1st day of August, 1869, as shown by the terms thereof. Will you now please be so good as to state whether by any further contract executed between Pickrell and said company and ratified by your board of directors, the said expiring contract was extended?

Ans. I recollect of none.

Q. 32. By whom and under whose supervision was the work done on said Catham road after the 1st of August, 1869?

A. I cannot answer the question.

Q. 33. In the former part of your examination you have
451 spoken of John F. Pickrell & Co. or Company; will you now be so good as to state whether you ever personally knew of such a firm, and, if yea, will you please give the names of each individual member thereof and where he or they resided at the time you knew them or had knowledge of them?

A. I did not personally know of such a firm.

Q. 34. Did John F. Pickrell individually, or John F. Pickrell & Co., or any member of said firm, if such firm existed within your knowledge, ever do any work on the Chatham railroad, in the building and constructing of the same; and, if yea, will you please state when and where such work was done by him or them, and state the time and give the name of the person or persons who did such work.

A. I should say that, according to their contract, they did the work on the road, equipping, &c., for thirty miles. I could not state the time or the names of the persons who performed the work.

Answer excepted to, as evasive and not responsive to the question, and question repeated.

A. I am satisfied that they did do the work, as they were bound by the contract.

Q. 35. My question does not ask you as to what you are satisfied or what you presume, but asks you to state of your own personal knowledge if you ever knew John F. Pickrell or John F. Pickrell & Co. to do or perform one single day's work on the Chatham railroad; and, if yea, when, where, and by whom such work was done, giving the name of the person or persons who did it. Will you please give a direct answer to the question, without indulging in any suppositions or inferences whatever?

A. Of my personal knowledge, I did not. I state that, as a director of the road, I was not called upon to go and see who was laboring on the road.

Answer excepted to, as to all that portion after the words "as a director of the road," &c., as not called for by or responsive to the question.

Q. 36. Did you, as a director of said company, ever speak
452 to or have any personal acquaintance or contact with John F. Pickrell or John F. Pickrell & Co., or any member of such alleged firm; and, if yea, please state when and where it was, and what was the cause or occasion thereof?

A. I never did.

Q. 37. Did John F. Pickrell or John F. Pickrell & Co. ever at any time appear before your board of directors and present any account or claim, or demand payment therefor, for any work done by them on the Chatham railroad, as contractors or otherwise?

A. Not when I was present at the meeting of the board of directors, that I recollect.

Q. 38. Who did the company pay, and through whom did they pay, for the work done and materials supplied to said Chatham railroad up to Haw river, or any other portion of said road within your knowledge?

A. I have no recollection to whom payment was made. If I was present, it has escaped my memory.

Q. 39. I will now invite your attention to another part of this litigation, and ask you to state if, within your knowledge, the Chatham Railroad Company did not receive three millions two hundred thousand dollars of bonds of the State of North Carolina, issued during the year 1868, to be used in the construction of its road?

A. I will answer I have forgotten. It has escaped my memory.

Q. 40. Within your knowledge, did said company receive any bonds of the State of North Carolina during the year 1868, to be used in the construction of its road?

A. I only recollect that the company was to pay for the work in State bonds.

Q. 41. But you still do not answer as to whether any such State bonds were received by the Chatham Railroad Company to be used in payment for the work on its road. Will you please state, to the best of your knowledge, whether such bonds were received?

A. I can only state that I believe they were received, and
453 that belief is predicated, in a great measure, on the fact that the work was to be paid for in State bonds.

Q. 42. Besides such State bonds or the proceeds thereof, do you not know that the Chatham Railroad Company was possessed of no other means of building its road?

A. I do not know.

Q. 43. As you state, you were a director of said company by appointment of the Governor previous to 1868, and was elected director during that year, and served during the year 1869, till some thirty miles of said road was completed, do you not know from what source and by what means the money was derived that paid for the work done thereon and the material and equipment furnished therefor?

A. I only recollect as stated in Exhibit marked J. B. L., No. 1, it being the contract between John F. Pickrell & Co. and the Chatham Railroad Company.

Q. 44. Then besides the contract embraced in Exhibit J. B. L., No. 1, you have no knowledge from whence the means were derived for building said Chatham railroad, is that so?

A. I have no recollection of it; it has escaped my memory.

Q. 45. During the period referred to was there any iron purchased for and delivered to said company within your knowledge and laid upon said road; and, if you say there was, will you please state who supplied that iron, and from whom it came?

A. Iron was purchased and laid on said road, but I was never present or had any knowledge of how it was received, except Exhibit J. B. L., No. 1, shows. I mean I was never present at the reception of the iron.

Q. 46. Who took charge of said iron when it was received and put on the road of said company?

A. I do not know, as I was not present, but presume that it was put on the road under the supervision of Dr. Hawkins, as it was to be done under his supervision according to the exhibit marked J. B. L., No. 1, referred to.

Q. 47. What part, if any, did John D. Whitford take or
454 perform in the affairs of the Chatham railroad; please answer this question fully and to the best of your recollection?

A. To the best of my recollection, I don't know that he took any part unless it might have been to attend to some little business for Dr. Hawkins in New York. I have no recollection of having any connection with him.

Q. 48. You have stated in your examination that Dr. Hawkins had charge of the work on the Chatham railroad previous to the year 1868, and subsequent thereto, as president; did or did not his direction and supervision continue to be the same during the entire construction af said Chatham road; or, if you say there was any change in the management or supervision, please state when it was, and in what particular, and especially during the construction of the first thirty miles?

A. During the construction of the first thirty miles my recollection is that the work was to be done under his supervision, and it continued to be the same, so far as I recollect.

Q. 49. You have stated that you were also a director of the Raleigh & Gaston Railroad Company; will you please state what interest, if any, the Raleigh & Gaston railroad had in the Chatham railroad as an owner of its stock, or interested in its construction, or otherwise?

A. I really do not recollect.

Q. 50. Had the Raleigh & Gaston railroad any interest in the Chatham railroad within your knowledge?

A. I cannot answer that question so far as my knowledge goes now.

Q. 51. Were not the officers and directors of the two roads the same during the time you were a director of both roads?

A. They were.

Redirect:

Q. 1. When you speak of the charge and supervision of Dr. Hawkins, president of the construction of the Chatham railroad, do you mean that his charge and supervision was to see that the work was faithfully executed and according to contract, or otherwise; and, if otherwise, how otherwise?

Obj. Question objected to, as leading.

455 A. I understood that he was to supervise the work and see that it was faithfully executed according to contract.

J. B. LITTLEJOHN.

Sworn and subscribed before me, this 20th day of February, A. D. 1880.

T. R. PURNELL,
Special Examiner.

By consent the further examination of witnesses is hereby adjourned until 11 o'clock a. m., to-morrow, February 21st, 1880.

T. R. PURNELL,
Special Examiner.

456 SATURDAY, *February 21st*, 1880.

Met at 11 o'clock a. m., pursuant to adjournment.

Present: Counsel for the complainants, as before stated.

Counsel for defendants make verbal return to notice to produce papers, dated 29th of August, 1879, and served on the 30th of August, 1879, and ask for further time to make formal and written return thereto, on the account of the sickness of Dr. W. J. Hawkins, which is allowed; which being done will close the evidence on the part of the defendants.

The counsel for the complainants states that, in consequence of the said papers not having been produced before the close of the taking of the testimony in chief and the examination of witnesses in relation thereto, the complainants reserve the right to examine any witness that may be deemed necessary in reference to the papers so produced under said call when the same shall be seen and examined in full in the way of rebuttal but as to no other matters; excepting therefrom, however, such papers as were produced before the close of complainants' testimony, of which examination for such purpose the complainants will give defendants' counsel notice within three days after the receipt of such additional papers; and that as to all other respects the testimony is closed.

And this commission is, by consent, adjourned subject to such notice.

T. R. PURNELL,
Special Examiner.

457 EXHIBIT J. B. L., No. 1.

MEETING OF THE BOARD, *July 6th*, 1869.

The president submitted to the board the following contract entered into with Messrs. J. F. Pickrell & Co., of New York, which was approved and ordered to be entered upon the minutes:

(Copy.)

NORTH CAROLINA, *Wake County:*

Agreement between the Chatham Railroad Company and John F. Pickrell & Co., of New York, made in pursuance of a preliminary contract dated September 1st, 1868, this March 6th, 1869.

The said Pickrell & Co. agree to finish the first section of thirty miles of the Chatham railroad, beginning at Raleigh, including

grading, masonry, culverts, and superstructure, but not including bridge over Haw river, under the direction and supervision of the president of the company; the rails on said section to be best English iron of the T pattern, fifty pounds to the lineal yard.

They agree likewise to furnish like iron for the second section, the total quantity for both sections to be (3615) thirty-six hundred and fifteen tons; the chairs on said first section to be of the Phœnix pattern.

Said Pickrell & Co. agree further to complete at Carr the station house, and also a well, side-track, water-tank, switch, and scales, and to build at two other points, to be designated by said president, like station houses, wells, tanks, side-tracks, switches, and scales; the side-tracks at all stations to be estimated as part of the thirty miles constituting the section.

It is agreed that the culverts on the said road are to be of stone or iron, except in case of low embankments, in which vitrified clay may be used. All the above work and materials are to be subject to the inspection of the president of the Chatham Railroad Company.

458 The said Pickrell & Co. agree likewise to furnish two first-class locomotive engines, delivered at Weldon, North Carolina; also two flat cars, ten gravel or dirt cars, one shanty car, one conductors' car, six pole or hand cars, the above list including those already furnished and received; said rolling stock to be subject to the inspection of the master machinist of the Raleigh & Gaston Railroad Company.

The work above mentioned, and rolling-stock, iron, &c., are to be finished and delivered on or before the first day of August, 1869.

In consideration of the faithful performance of this contract, the Chatham Railroad Company agrees to pay from time to time, as the work progresses, six hundred and eleven thousand ($611,000) dollars, said Pickrell & Co. accepting bonds of the State at sixty per cent., as per statement rendered.

The said Chatham Railroad Company is to pay for above-mentioned iron seventy-nine $\frac{3.6}{1.0.0}$ dollars per ton, and likewise the freight on the iron, materials, and supplies from New York to destination on the line of the road; the iron to be paid for on delivery at Portsmouth, the payment to be credited on the $611,000 above mentioned.

This contract includes work already done, and materials, stock, &c., furnished heretofore, for which receipts have been given and payments made by the parties.

In testimony whereof, the said parties hereto affix their signatures.

(Signed) W. J. HAWKINS,
Pres't C. R. R. Co.

(Signed) JOHN F. PICKRELL & CO.

Witness:
KEMP P. BATTLE.
JOHN D. WHITFORD.

A true copy from minutes.

W. W. VASS,
Secretary, &c.

459 RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY
to
CHARLES M. ROBINSON *et al.*

Whereas, on the third day of October, 1872, the stockholders of the Raleigh and Gaston Railroad Company, and on the twenty-third day of April, 1873, the president and directors of said company resolved, as set forth in resolutions, of which copies are subjoined to a deed made on the day last mentioned, between the said company, of the first part, and Edmund Randolph Robinson, of New York, William Norris Wheeler, of Philadelphia, and William E. Anderson, of Raleigh, N. C., of the third part, which deed is registered in the State of North Carolina, in the several counties of Wake, Granville, Franklin, Warren, and Halifax; and whereas, on the sixth day of April, 1877, the stockholders, and on the seventh day of the same month, the directors of the Raleigh and Augusta Air-Line Railroad Company, resolved, as set forth in resolutions, copies of which are hereto subjoined; therefore, this deed made the day last mentioned between the Raleigh and Augusta Air-line Railroad Company, of the first part, and Charles M. Robinson, of New York, Charles C. Savage, of Philadelphia, and John W. Graham, of Hillsborough, North Carolina, of the second part, witnesseth: That this deed is made to secure such guaranteed interests or dividends upon the guaranteed or preferred stock provided for by the
460 act of North Carolina, ratified on the thirteenth day of December, 1871, as are mentioned in said resolutions of the stockholders adopted on the sixth day of April, 1877, according to the pledge contained in resolutions adopted at an adjourned meeting of stockholders of the same company, held on the 19th of July, 1872. And the Raleigh and Augusta Air-Line Railroad Company, in consideration of the premises and of ten dollars paid to said company by said parties of the second part, before the sealing and delivery hereof, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, convey, assign, transfer, and set over, unto the parties of the second part the whole of the said company's railroad rights, privileges, and franchises, and all its works and property of every description; to have and to hold the same unto the parties of the second part, their heirs, successors, and assigns, in trust, that until there shall be default in paying on the first day of July or January in any year a semi-annual dividend of not less than four per cent. on any shares or share of the guaranteed or preferred stock before mentioned, the said company may retain possession of its works and property and enjoy the same, with the rents, toll, and other income thereof, and the president and directors may manage and operate said stocks and property (*and property*) and apply the proceeds hereof in accordance with the charter of the company and the deeds made to and by it. And at any time or times before such default, the said parties of the second part, or any two of them, or the survivor of them, or his executors or administrators, may sell and convey any of the real, and permit the sale and transfer of any of the personal, property

of said company, and secure the proceeds of such sale or sales in bonds of the United States, or in coupon bonds of the Raleigh and Gaston Railroad Company, secured by the said deed of twenty-third day of April, 1873, or in other property, holding what is so invested with the interest and other income thereof, upon the same trusts as are declared in respect to the property, out of the sale whereof the proceeds so reinvested shall arise. But in case there shall be default in paying on the first day of July and January, in any year, a
461 semi-annual dividend of not less than four per cent. on any shares or share of the guaranteed or preferred stock before mentioned, then, if the default shall continue for two months, the said parties of the second part, or any two or either of them, or the executor or administrator of the survivor of them, may proceed, personally or by attorney or agent, to take possession of the company's works and property, and manage the same, and apply so much of the rents, tolls, and other income thereof as may be necessary to defray taxes, charges for repairs, and the expense of operating the railroad and conducting its business; and whether such possession be taken or not, the parties of the second part, or any two or either of them, or the executor or administrator of the survivor of them, may, and if required by the holders of certificates for the greater part of those shares of said guaranteed or preferred stock for which certificates may have been issued shall, give notice of the time and place of sale of all the company's works and property by advertisement published not less than three times a week for six weeks in two daily newspapers published in the city of New York, and in one newspaper published in each of the cities of Philadelphia, Norfolk, and Raleigh, if and so far as the same may be practicable; and at said time and place, or such time and place as the sale may be adjourned to, shall make a sale under the deed of all the company's works and property, for cash, or upon such credit as may be prescribed by the holders of certificates for the greater part of the shares of said guaranteed or preferred stock for which certificates may have been issued, and after receiving the purchase-money shall make, pursuant to the sale, a conveyance by which sale and conveyance then shall pass to the purchaser at the sale not only the works and property of the company as they were at the time of making this deed (or the proceeds before mentioned of sales of said property), but any works which the company may after this time and before the sale have constructed, and all other property of which it may be possessed at the time of the sale other than debts due to it, and all the money which may be received in the execution of this trust, whether for income or proceeds of
462 sale, shall be applied, first, to the payment of necessary expenses, including a commission to be divided between the acting trustees of five per cent. on the first thousand dollars and three per centum on the residue of such income or proceeds, and then *pro rata* to pay the holders of certificates of shares of said guaranteed or preferred stock not only such semi-annual dividends as may at the time of the sale be in arrears on said shares, but also the par value of said certificates, and the surplus shall be subject to

the payment of all money for which the company may at the time of such sale be liable otherwise than in respect to said certificates of shares of guaranteed or preferred stock, and after payment of all debts due by the company then whatever may remain of said surplus shall be distributed among the holders of shares of stock of the company other than said guaranteed or preferred stock, according to the respective interests of said holders. If, before a sale and conveyance by virtue hereof, any of the parties of the second part shall die or become incapable of acting in the execution of the trusts, the survivors or survivor of said parties may, by an instrument of writing, signed and sealed, appoint successors or successor in the place and stead of them or him so dead or incapable; such instrument, after being duly acknowledged or proven, shall be registered in the counties wherever this deed is registered; and from the time of the complete registration thereof such successor shall without any further conveyance be invested with all the right, estate, power, and authority which the party in whose place and stead he is appointed had when such party died or became incapable of acting.

[Raleigh & Augusta Air-Line Railroad Company.]

Sealed with the common seal of the Raleigh and Augusta Air-Line Railroad Company, and signed by the president thereof and two other members of the corporation; also signed and sealed by the parties of the second part.

JNO. M. ROBINSON, *President.*
JAS. B. BATCHELOR, *Director.*
WALTER CLARK, *Director.*
CHARLES M. ROBINSON, *Trustee.* [SEAL.]
CHARLES CHAUNCEY SAVAGE, *Trustee.* [SEAL.]
JOHN W. GRAHAM, *Trustee.* [SEAL.]

Attested by the following witnesses:
THOMAS BADGER, as to Jno. M. Robinson.
JAS. B. BATCHELOR.
WALTER CLARK.
JNO. W. GRAHAM.
CHARLES CHAUNCEY, as to Chas. C. Savage.

463 *Copy of a resolution adopted in a general meeting of stockholders of the Raleigh and Augusta Air-Line Railroad Company, April 6th,* 1877, *by a majority of the votes of all the stockholders, the vote being* 15,454 *yeas,* 153 *nays.*

Whereas the General Assembly of North Carolina, by an act entitled "An act concerning the Chatham Railroad Company," amendatory of certain acts, and authorizing a change of name, which act was ratified on the 13th day of December, 1871, and accepted by the stockholders of the Chatham Railroad Company on the ninth day of January, 1872, did, in the first section thereof, enact that the Chatham Railroad Company should thereafter be known by the corporate name of the Raleigh and Augusta Air-Line Railroad Com-

pany; and did, in the second section of said act, make it lawful for said railroad company to change the line of its road so as to extend it, as provided in that section; and did, in the third section of said act, enact that if the capital stock of said company before authorized should be deemed insufficient for the purposes of said act, it should be lawful for said company, in general meeting, to increase the same, and the board of directors, with the consent of a majority of the votes of all the stockholders in general meeting, might make such portion of the capital stock before authorized, or of any additions to the same, as they might deem advisable, guaranteed or preferred stock, upon which such interest or dividends might be guaranteed as the directors might deem advisable; and the directors might, with the consent of a majority of the votes of all the stockholders, in general meeting, secure such guaranteed interest or dividends by liens or mortgages upon all the property and franchises and income of the company, or upon any portion thereof; and the directors might, in their discretion, authorize subscriptions to be secured for such additional stock (either common or guaranteed, or both), at such prices and in such manner as might be prescribed by them, or might sell the same, or any part thereof, for the benefit of the company, provided that the entire capital stock so created should not exceed five millions of dollars; and by the fourth section of
464 said act authority was given to the Raleigh and Gaston Railroad Company, or any other railroad company connecting therewith, to subscribe to or purchase stock of any kind of said Raleigh and Augusta Air-Line Railroad Company, and it was made lawful for any such company to purchase or endorse the mortgage bonds of the Raleigh and Augusta Air-Line Railroad Company; and whereas, at an adjourned meeting of the stockholders of the Raleigh and Augusta Air-Line Railroad Company, held on the 19th of July, 1872, it was resolved, 1st, that the president and directors of the company receive subscriptions from time to time to the capital stock of the company to an amount which, with that already subscribed, shall not exceed thirty-two thousand shares: 2d, that of the issue of said stock twelve thousand shares be a guaranteed stock, entitled, under any circumstances, to receive eight per cent. per annum, and the president and directors are instructed to pay semi-annual dividends on said shares, on the first days of July and January in each year, of not less than four per cent., any holders of said guaranteed shares being privileged to receive any excess of semi-annual dividends beyond four per cent., which may be at any time paid on the common stock of the company without impairing the guaranty of eight per cent. per annum given by this resolution; and, 3d, for the purpose of eight per cent. per annum on the guaranteed shares so created, the stockholders pledge themselves, in the event of its being at any time thereafter deemed requisite or advisable for the company to give a deed of trust or mortgage on any of its property or privileges, to embrace said shares on the first deed of trust or mortgage given by the company to protect the guaranty given in the preceding resolution by making the principal of the whole guaranteed stock created by said resolution, and eight cent. dividends on the same, part of the

first lien on all the property, rights, privileges, and franchises of the company, and a debt of the company immediately payable in the event of any default in the particular payment of the dividends so guaranteed; and whereas, after the capital stock of the
465 company before authorized had thus been deemed insufficient for the purposes of the act of December 13th, 1871, and after the company had thus in general meeting endorsed the same, the board of directors, with the consent of a majority of the votes of all the stockholders so given in general meeting, did make a portion of the capital stock, or of additions to the same, a guaranteed or preferred stock, upon which such interest or dividends are guaranteed, or are mentioned in said resolution of the stockholders, the directors deeming the same advisable, and the Raleigh and Gaston Railroad Company has subscribed to and thereby purchased such guaranteed or preferred stock to the amount of one million of dollars, and further portions of such guaranteed or preferred stock may be subscribed for or purchased by other companies or persons of such guaranteed interest, or dividends be effectually secured. Therefore, in this general meeting of the stockholders of the Raleigh and Augusta Air-Line Railroad Company it is now resolved, that the directors may, with the consent, which is hereby given, of a majority of the votes of all the stockholders, secure all such guaranteed interests or dividends as are hereinbefore mentioned by a deed of trust, mortgage, or other lien, the whole of said company's railroad rights, privileges, and franchises, and all the works and property of any description.

A true copy from the minutes.

W. W. VASS, *Secretary.*

Copy of Proceedings of the Board of Directors of the Raleigh and Augusta Air Line Railroad Company on the 7th day of April, 1877.

The president informed the board that he had caused to be prepared by counsel, and now submitted to the board for approval, the form of a deed to secure such guaranteed interests or dividends as are mentioned in the resolution of the stockholders of this company on the 6th day of this month, whereupon resolved that a deed of trust be now executed according to the form so submitted,
466 and that Charles M. Robinson, of New York, Charles C. Savage, of Philadelphia, and John W. Graham, of Hillsborough, North Carolina, be the trustees therein. Thereupon, in the presence of this board, and by its authority, the said deed was sealed with their company's common seal, and signed by the president and two of the directors of the company, and attested by a witness.

A true copy from the minutes.

W. W. VASS, *Secretary.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On the 13th day of April, A. D. 1877, before me, Charles Nettleton, a commissioner appointed by the State of North Carolina, in

and for the State of New York, residing in said city of New York, personally came Charles M. Robinson, the bargainer in the foregoing instrument, and acknowledged the execution thereof.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 13th day of April, A. D. 1877.

[SEAL.] CHARLES NETTLETON,
Commissioner for North Carolina in New York City,
No. 117 *Broadway, New York City.*

STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

On this the 14th day of April, A. D. eighteen hundred and seventy-seven, before me, Charles Chauncey, a commissioner appointed by the Governor of the State of North Carolina, in and for the State of Pennsylvania, personally appeared Charles C. Savage, one of the bargainers in the foregoing deed of trust, personally known
467 to me, and the said deed being also produced and exhibited before me, he acknowledged the execution thereof.

Witness my hand and official seal, the day and year above written.

[SEAL.] CHARLES CHAUNCEY,
A Commissioner of North Carolina.

Probate Court.

STATE OF NORTH CAROLINA, *Wake County:*

Be it remembered that on this the seventeenth day of April, A. D. 1877, the execution of the foregoing trust deed on the part of John M. Robinson, Joseph B. Batchelor, Walter Clark, and John W. Graham, together with the corporate seal of the Raleigh and Augusta Air-Line Railroad Company affixed thereto, was proven by the oath and examination of Thomas Badger, the subscribing witness thereto, and the due acknowledgment to the foregoing trust deed by Charles M. Robinson, one of the grantors therein, before Charles Nettleton, a commissioner for North Carolina in New York, the certificate seal of which is hereto annexed, and adjudged to be in due form and according to law, and the due execution of the same on the part of Charles S. Savage being duly acknowledged before Charles Chauncey, a commissioner of North Carolina for Pennsylvania, his certificate of the same and seal attesting is exhibited before me, which is adjudged to be in due form and according to law. Let the said deed and these certificates be registered.

In witness whereof, I have hereunto set my hand and official seal, this the day and date above written.

[SEAL.] J. N. BUNTING,
C. S. C. and Probate Judge.

468 Filed for registration April 19th, 1877, at one-quarter before nine o'clock a. m., and registered in the register's office

of Wake county, in book No. 47, pages 338 to 345, inclusive, the 19th day of April, 1877.

W. W. WHITE,
Register of Deeds.

STATE OF NORTH CAROLINA, *Wake County:*

I, William W. White, register of deeds in and for the county of Wake, State aforesaid, certify the foregoing to be a true copy of a deed of mortgage from the Raleigh and Augusta Air-Line Railroad Company to Charles M. Robinson and others, together with a copy of resolutions passed by the stockholders of said company in relation to said mortgage, also certificates of probate and registration thereof, as appears of record in my office in book No. 47, pages 338 to 345, inclusive.

In testimony whereof, I have hereunto set my hand and affixed the seal of the board of county commissioners (not having official seal to register's office), in the city of Raleigh, the 13th day of March, A. D. 1880.

W. W. WHITE, [L. S.]
Register of Deeds.

469 *Receipts Signed.*

Dec.	31, '68		12,519 68
Janu'y	31, '69		4,639 82
Feb'y	29		4,894 52
March	31		1,416 52
April	30		72,506 64
May	31		10,296 54
Do.	do.	J. H. Larow, culvert work	1,184 40
June	30		3,765 16
July	31		17,629 53
August	31		16,587 14
Sept.	30		2,855 10
Oct.	31		3,916 23
Nov.	31		2,799 13
Dec.	31		15,055 14
Jan'y	31		10,239 28
Feb'y	24, '70		2,236 09
	25		10,805 66
	26		3,743 61
	28		22,439 63

470 In the Circuit Court of the United States, for the Western District of North Carolina. In Equity.

HERMANN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

Joseph B. Batchelor and Thomas C. Fuller, Esq'rs, solicitors for the defendants other than John F. Pickrell, protesting against the

right of complainants to call upon said defendants, or these respondents to produce the papers, or any of them, mentioned in the notice dated 29th August, 1879, and served 30th August, 1879; nevertheless, in compliance with their verbal agreement noted by the commissioner herein at the close of the deposition of defendants' witness, J. B. Littlejohn, now and here, formally and in writing, make answer unto the said notice, as follows, to wit:

1st. As to the first demand, they say that in the course of the examination of the original of said paper has been produced, and a copy thereof has been filed.

2d. As to the second demand, they say that a copy of the resolution called for has been filed.

3d. As to the third demand, the said paper therein called for has been produced and filed.

4th. As to the fourth demand, they say that the estimates therein called for were made and furnished to John F. Pickrell & Co., as these respondents are informed and believe, but respondents are unable to find the same in the office of defendant, and, therefore, cannot produce and file a copy.

5th. As to the fifth and sixth demands respondents produce the original account, headed "Dr., J. F. Pickrell & Co., in account with W. J. Hawkins, prest. and agent Chatham R. R., Cr.," a copy of which has been duly filed, which said original, dated June 25th, 1869, and signed John F. Pickrell & Co., in the proper handwriting of John F. Pickrell, is herewith submitted for an inspection; they also produce receipts of John F. Pickrell & Co., numbered 83, 109, 130,
471 146, 166, 179, 191, 213, 214, 219, 226, 237, 248, 260, 291, 292, 293, and 294, which evidence payments made to John F. Pickrell & Co. by the Chatham Railroad Company for building their road, duly cancelled by order of the board of directors of said company, and copies of which are herewith filed, the originals being herewith produced for inspection; they also produce for inspection copy of account headed "Dr., John D. Whitford, agent, in account with W. J. Hawkins, prest. Chatham R. R. Co., Cr.," dated June 23d, 1869, a copy of which has already been filed.

6th. In answer to the seventh demand, respondents say that there are no such resolutions as are called for in said demand in paragraph 1 thereof; that as to the demand contained in paragraph 2 thereof, they have already produced the only resolution of said company, and filed a copy thereof, marked "C. H. K. T., No. 1," with the deposition of Charles H. K. Taylor; with regard to the demand contained in paragraph 3 thereof, respondents say no such resolution was ever passed, as they are informed and believe.

7th. As to the demand in the eighth, they say, after search, they are unable to find any such bonds as therein required, and, upon information, they do not believe that any such bond or bonds are now in the office of the defendant.

8th. As to demand No. 9, respondents say the original of all papers which they have touching the purchase of iron have been produced and copies filed, and that as to orders and directions given by the Chatham Railroad Company to W. J. Hawkins, president, or

John D. Whitford, or by W. J. Hawkins, president Chatham Railroad Company, to John F. Pickrell or John F. Pickrell & Co., for the purpose mentioned in requisition No. 9 of said demand, none such exist, as respondents are informed and believe.

9th. As to the demand No. 10, respondents say that no such paper exists, except the account between John F. Pickrell and Baltzer & Taaks, which has been produced and copy filed.

472 10th. Respondents make the same answer to demand No. 11 as made to the next preceding demand, No. 10.

11th. As to the demand No. 12, respondents say that the only order or direction, as called for in said demand, is the order already proved by John F. Pickrell.

12th. As to the demand No. 13, respondents say that they are informed and believe that the order called for therein was a telegraphic order, and no copy is on file in the office of defendant, and the same is true with regard to the order called for in second paragraph of same demand.

13th. With regard to the demand No. 14, respondents say the original has been produced and a copy thereof filed.

14th. With regard to demand No. 15, all the accounts called for therein have been produced, and copies filed, except the fifth, "Chatham R. R. Co. in account with John F. Pickrell. Signed, for John P. Pickrell, E. Galpin." As to that no such account is on file in office of defendant, and respondents are advised and believe that no such account was ever rendered to the Chatham Railroad Company.

15th. As to the demand No. 16, respondents have produced and filed copies of all the releases and receipts signed by John F. Pickrell & Co. and John F. Pickrell to the Chatham Railroad Company in reference to the contract and agreement dated March 6th, 1869.

(Signed) T. C. FULLER,
JOS. B BATCHELOR,
Sols. for Defendants.

473 J. F. Pickrell & Co. in account with with W. J. Hawkins, pres't and agent Chatham R. R. C.

1868.		Dr.
Dec. 21.	To sale of N. C. State bonds, as follows:	
	Sold 387 bonds at N. Y. Ex., 63 .61½	$238,005
	" 1,000 " " " " 61½.60	600,000
	" 100 " " " " 60	60,000
		$898,005
1869.		
June 23.	To bal. due Chatham R. R. Co	$299,855 17

Received of W. J. Hawkins, pres't Chatham R. R. Co., bonds of State of North Carolina, issued under an act of the convention, numbered from 1 to 1185, both inclusive 1,185

Also, bonds State of North Carolina, issued under act Legislature, 15th Aug., 1868 1,900

D'ft of M. T. Littlefield for sale of 100 bonds accepted by us 100

3,185

Cr. By sale of bonds 1,487

Turned over to J. D. Whitford, ag't 1,698

(Signed) JOHN F. PICKRELL & CO.

474 J. F. Pickrell & Co. in account with W. J. Hawkins, pres't and agent Chatham R. R. Co.

1868.		Cr.
Sept. 10.	By cash paid you, net loan	$97,266 67
Oct. 19.	" " " " for check	42,636 89
	" " " " " "	63,500 00
	Com. and interest on	2,733 33
1869.		
Nov. 1.	Insurance on iron	2,113 68
	Storage	60 60
	Barney, Butler & Parsons, att'ys', p'd fees	100 00
	Cash rec'd on acc. contract with your road	389,737 66
	Balance	299,885 17
		$898,005 00

June 26. By transfer'd to J. D. Whitford, your agent $899,855 17

E. & O. E.
New York, June 26, 1869.
(Signed) JOHN F. PICKRELL & CO.

(No. 83.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$12,519.68. RALEIGH, N. C., *Dec.* 31, 1868.

Received of W. W. Vass, treasurer of Chatham Railroad Company, twelve thousand five hundred and nineteen 68-100 dollars, on account of contract for building the road.

(Signed) JOHN F. PICKRELL & CO.

App'd.
(Signed) W. J. HAWKINS, *Pres't.*

475 (No. 109.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$4,639.82. RALEIGH, N. C., *Jan.* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, four thousand six hundred and thirty-nine 82-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.
(Signed) W. J. HAWKINS, *Pres't.*

(No. 130.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$4,894.52. RALEIGH, N. C., *Feb. 29th*, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, four thousand eight hundred and ninety-four 52-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres't.*

(No. 146.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$1,416.52. RALEIGH, N. C., *March 31st*, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, one thousand four hundred and sixteen 52-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres't.*

476 (No. 166.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$72,506.64. RALEIGH, N. C., *April* 30, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, seventy-two thousand five hundred and six 64-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

(No. 179.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$10,296.54. RALEIGH, N. C., *May* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, ten thousand two hundred and ninety-six 52-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

(No. 191.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$3,765.16. RALEIGH, N. C., *June* 30, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, three thousand seven hundred and sixty-five 16-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

477 (No. 213.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$17,629.53. RALEIGH, N. C., *July* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, seventeen thousand six hundred and twenty-nine 53-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't*

(No. 214.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$16,589.14. RALEIGH, N. C., *August* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, sixteen thousand five hundred and eighty-seven 14-100 dollars, for account of contract for building road.

(Signed) JOHN F. PICKRELL.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

(No. ——.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$2,855.10. RALEIGH, N. C., *Sept.* 30, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, two thousand eight hundred and fifty-five 10-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

478 (No. 226.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$3,916.23. RALEIGH, N. C., *Oct.* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, three thousand nine hundred and sixteen 23-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

(No. 237.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
$2,799.13. RALEIGH, N. C., *November* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Com-

pany, twenty-seven hundred and ninety-nine 13-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

(No. 248.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,

$15,055.14. RALEIGH, N. C., *December* 31, 1869.

Received of W. W. Vass, treasurer of Chatham Railroad Company, fifteen thousand and fifty-five 14-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

479 (No. 260.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,

$10,239.28. RALEIGH, N. C., *Jan.* 31, 1870.

Received of W. W. Vass, treasurer of Chatham Railroad Company, ten thousand two hundred and thirty-nine 28-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres't.*

(No. 271.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,

$3,743.61. RALEIGH, N. C., *Feb.* 26, 1870.

Rec'd of W. W. Vass, trs. Chat. R. R. Co., three thousand seven hundred and forty-three 61-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.

(Signed) W. J. HAWKINS, *Pres'd't.*

(No. 272.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,
RALEIGH, N. C., *Feb.* 24, 1870.

W. W. VASS,
Tr's'r Chatham Railroad Company:

You will charge J. F. Pickrell & Co. with two thousand two hundred and thirty-six 9-100 dollars and credit miscellaneous account with same.

$2,236.09.

(Signed) W. J. HAWKINS,
Pres'd't C. R. R.

480 $2,236.09. RALEIGH, N. C., *Feb.* 24, 1870.

Rec'd of W. W. Vass, tr. Chat. R. R. Company, two thousand two hundred and thirty-six 9-100 dollars, on account contract for building road.

(Signed) JOHN F. PICKRELL & CO.

(No. 294.)

$22,439.65. RALEIGH, N. C., *Feb.* 28, 1870.

Rec'd of W. W. Vass, tr. Chatham Railroad Company, twenty-two thousand four hundred and thirty-nine 65-100 dollars, on acc't contract for building road.

(Signed) JOHN F. PICKRELL & CO.

(No. 294.)

CHATHAM RAILROAD COMPANY, TREASURER'S OFFICE,

$10,805.66. RALEIGH, N. C., *Feb'y* 25, 1870.

Rec'd of W. W. Vass, Tr. Chat. R. R. Co., ten thousand eight hundred and five 66-100 dollars, on account of contract for building road.

(Signed) JOHN F. PICKRELL & CO.

App'd.—

(Signed) W. J. HAWKINS, *Pres'd't.*

I, Thomas R. Purnell, special examiner, hereby certify that the foregoing is a true and correct copy of the formal written answer of the defendants, and the receipts and papers therewith filed, to the demand, dated Aug. 29th, 1879, and served on them the 30th day of August, 1879. Made in compliance with the verbal answer noted at the end of the deposition of Joseph B. Littlejohn.

T. R. PURNELL,
Spec. Ex'r.

481 United States Circuit Court, Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH AND GASTON RAILWAY COMPANY *et al.*

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

John F. Pickrell, being duly sworn, deposes and says: That he has been examined and cross-examined as a witness in the above-entitled cause; that, among other things, he was interrogated as to any payments made to him by the Chatham Railroad Company, as contractor or otherwise, for the building of the road of said company, when he stated and repeated that no money was paid to him for building said road; that he never did or performed any work whatsoever on said company's road, nor caused nor procured any

work to be done thereon; that all such work was done under the employment and supervision of Dr. Wm. J. Hawkins, the president of said company; that deponent never was at any time upon the line of said road previous to signing receipts herewith referred to; that he never saw any engineer's estimate of the work upon said road, or a voucher founded thereon; that there was indeed no reason why he should see either estimates or vouchers, as he never at any time or in any manner performed, or was obligated to perform, any such work.

Deponent further says: That during said examination certain vouchers and accounts were shown to him, the nature of which he explained, but stated, as the truth is, that no money was ever paid to him upon said vouchers, but he did state how and in what manner he received certain moneys as a partial division of profits from Hawkins and Whitford preceding and at the time of his signing certain releases, on or about the 14th day of March, 1872.

Deponent further says: That he is now shown a printed paper containing eleven pages, entitled in this cause, signed on the
482 4th page "T. C. Fuller and Jos. B. Batchelor, solicitors for defendants," having appended thereto two accounts, dated, respectively, September 10th, 1868, and December 21st, 1868, purporting to be accounts between deponent and Wm. J. Hawkins, president and agent of the Chatham Railroad Company, bearing the signature of John F. Pickrell & Co., on pages 4 and 5 thereof, with nineteen additional pages extending from page 5 to page 11, and numbered, respectively, 83, 109, 130, 146, 166, 179, 191, 213, 214, —, 226, 237, 248, 260, 271, 272, 294, and 294, each purporting to be signed "John F. Pickrell & Co.," a copy of which print is appended hereto.

Deponent further says that signatures were signed by him, that being at the time, the assumed firm of John F. Pickrell & Co., composed of deponent and John D. Whitford; that the receipts bearing such signatures were a class of papers signed by deponent at the request of said Wm. J. Hawkins, president of the Chatham Railroad Company, but that no money or other value was paid to deponent at the time of such signing, or at any other time, and were not signed at the time they bear date, but were signed in batches at the request of said Hawkins and Whitford some time after the first day of May, 1869, but the precise date deponent cannot remember, but possibly after the date of the receipt No. 294.

Deponent further says that he fixes these facts and dates in his mind, because at the times of signing the papers hereinbefore mentioned he took a list of the same on a sheet of letter paper, with a printed heading of his office, at No. 42 Broadway and 53 New street, in the city of New York; the original of which he annexes to and makes a part of this affidavit; that he did not occupy said office until after the first day of May, 1869, and is positive as to that date, but cannot fix at what later date at which he signed the papers above mentioned.

Deponent further says that he had nothing whatever to do with or for said Chatham Railroad Company in the construction of its

road, nor as to any other matter, except as detailed in his depo-
483 sition aforesaid in this cause, and in this affidavit; and that he would have stated the facts herein detailed upon his previous examination had said accounts been presented to him, and he inquired of about them.

JOHN F. PICKRELL.

Sworn to before me, this first day of October, 1880.
[SEAL.] ANTONIO C. GONZALEZ,
Notary Public, N. Y.

484 United States Circuit Court, Western District of North Carolina.

HERMANN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

To the honorable the judges of the circuit court of the United States for the Western District of North Carolina:

The petitioners, the above-named complainants respectfully state:

That whereas certain papers purporting to be receipts, signed by John F. Pickrell to W. W. Vass, treasurer of the defendant company, for the payment of money were without notice to the petitioners, filed with the examiner of the court, Thomas R. Purnell, Esq., on the third (3) day of April, 1880, without oath, proof, or identification of any sort, and after the taking of testimony on the part of petitioners had been concluded, and only three days before the April term of this court, 1880, have been admitted in evidence on the part of the defendant; and whereas the motion of petitioners, asking that said so-called receipts be excluded from the evidence on the part of the defendants has been denied, and the said papers retained on the file of this court:

Your petitioners now and hereby pray that the sworn affidavit of the witness, John F. Pickrell, entitled in this cause, and now and here made part of this petition, may be received and read as evidence so far as to meet and explain the origin, character, and object of said so-called receipts—so received in evidence.

That by the said sworn affidavit of said Pickrell, now presented, it is and will be proved that said pretended receipts are false and fictitious, and are part of other papers gotten by W. J. Hawkins, defendant herein, to use before a committee of the Legislature of North Carolina, and also to settle his accounts as president of the defend-
ant company, and were for that purpose signed when required
485 in batches, and that the lot of said so-called receipts filed as aforesaid do not evidence the payment of money to said Pickrell by said Vass, as purports to be shown by said papers.

That both said Pickrell and said Vass were sworn as witnesses on the part of petitioners, and notices to produce said papers were duly served on the defendant company as early as August 30th, 1879, but no such papers were produced, but on the contrary were refused to

be produced. And though said Pickrell and Vass were each examined, and subject to cross-examination by defendants, and each of whom swore to the contrary of such payments, yet the said pretended receipts were not presented to the said witnesses whose names they —— for them to explain.

That the presenting of said receipts in evidence and their admission by the court is a surprise to the petitioners who, therefore, pray that the sworn affidavit of the witness Pickrell, made part of this petition, may be read in evidence so far as respects said receipts, as your petitioners will ever pray.

HERMAN R. BALTZER AND
W. G. TAAKS, *Petitioners*,
By JOS. B. STEWART, *Solicitor*.

486 Circuit Court of the United States, Western District of North Carolina.

HERMAN R. BALTZER AND WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh & Gaston Railroad Company, William J. Hawkins, John D. Whitford, and John F. Pickrell, Defendants.

And was at a circuit court of the United States held in and for the circuit aforesaid, at Greensboro the —— day of April, 1880. Comes the complainant by these solicitors, and it appearing to the satisfaction of the court that the defendant, John F. Pickrell, one of the parties sued, and impleaded in this cause, was duly served with the writ of subpœna issued under the seal of this court in manner and form as authorized by law, but failed to enter his appearance to or answer complaint bill, as he was by said writ of subpœna commanded to do, but both made default therein; and it further appearing that, at the October term of this court, to wit, on the 18th day of October, 1878, the complainants duly made and entered of file in the clerk's office of this court an order taking a decree *pro confesso* as to all and several the matters as in complainant's bill alleged, so far as the same affects, relates to, or seeks relief against the said defendant. Wherefore, the premises considered, it is now, by the court, ordered that a decree *pro confesso*, as heretofore entered, be, and the same is now and is hereby, adjudged and decreed against the defendant, John F. Pickrell, for all and singular the relief as in complainants' bill alleged, and prayed, with costs in the sum of one dollar.

——— ———, *Judge*.

487 Circuit Court of the United States, Western District of North Carolina. In Equity.

HERMAN R. BALTZER and WILLIAM G. TAAKS
vs.
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

It is hereby mutually agreed and stipulated that this suit shall be

heard and tried on any day during the second week of the term of this court, to be convened and held at Charlotte, North Carolina, commencing on the second Monday in June, 1880, that the court may be ready to hear the same.

JOS. B. STEWART,
Sol. for Complainants.
THOS. C. FULLER,
For Sol. of Defendants.

United States Circuit Court, Western District of North Carolina.
In Equity.

HERMAN R. BALTZER and WILLIAM G. TAAKS
against
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY *et al.*

It appearing to the court that by the consent of parties, this suit is agreed to be heard and tried during the term of the court to be held at Charlotte, N. C., commencing on the second Monday of June, 1880. It is now ordered that the clerk of this court shall cause all and singular—the pleadings, proofs, and papers—filed in this suit to be duly transmitted to the clerk of the said court to convene at Charlotte on or before the second Monday in June, 1880.

ROB'T P. DICK, *Judge.*

488 In the Circuit Court of the United States, Western District of North Carolina. Charlotte Term. In Equity.

BALTZER and TAAKS
vs.
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY and others.

This cause having by consent of counsel been transferred for trial at the present term now being held at Charlotte, and the time not being sufficient to try the same, as proposed, it is now by the court ordered that the record, papers, and proofs ordered to be transmitted to the clerk of this court for the trial of this suit be returned to the clerk at Greensboro, and that this cause be, and the same is hereby, set for trial at the term of this court to be held at Greensboro on the first Tuesday in October, A. D. 1880.

HUGH L. BOND, *C. Judge.*

Dated June 17th, 1880.

489 To all to whom these presents shall come or may concern, Greeting:

Know ye that we, "John F. Pickrell & Co.," of the city of New York, for and in consideration of the sum of thirty thousand dollars, lawful money of the United States of America, to us in hand paid by the Chatham Railroad Company, a corporation created and existing under the laws of the State of North Carolina, such payment being partly in lieu of fifty-three bonds of the State of North Carolina issued to said company in the year 1868 on account of the construction of said road and in part for other services as agents or

contractors, have remised, released, and forever discharged, and by these presents do for ourselves, our and each of our heirs, executors and administrators, remise, release and forever discharge the said Chatham Railroad Company, and its several officers and agents, successors, and assigns of and from all claims and demands whatsoever in the law or in equity and all manner of actions and causes of actions, debts, dues, and accounts which against said company we ever had, now have, or which our heirs, executors, or administrators can or may have upon or by reason of any matter, cause, or thing or any dealings or transactions whatsoever from the beginning of the world to the day of the date of these presents, and especially from all obligation or liability under the contract or agreement heretofore existing between us and the said Chatham Railroad Company for the construction of the railroad of said company, and from all matters and things touching the same or connected with or arising out of the same. The said contract being hereby terminated.

This release is not to affect in any manner any claim on the part of the said Chatham Railroad Company, its successors and assigns, in respect to forty-eight bonds of the State of North Carolina deposited with us by said company and receipted for in the year 1869.

In witness whereof, we have hereunto set our hands and seals, the fourteenth day of March, in the year one thousand eight hundred and seventy-two.

JOHN F. PICKRELL & CO.
JOHN F. PICKRELL.

Sealed and delivered in the presence of—
JAS. H. LANGFORD.
JAS. H. LANGFORD.

A true copy of original.

490 In the Circuit Court of the United States in and for the Western District of North Carolina, at Greensboro. In Equity.

HERMAN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, John F. Pickrell, John D. Whitford, and William J. Hawkins, Defendants.

And now, at the adjourned July term, A. D. 1882, this cause coming on to be heard upon the bill, answers, exhibits, proofs taken, and all formal orders, &c., &c., and the same having been debated by counsel, both for the said complainants and the said defendants, in the presence of the court, and the same being seen and heard and fully understood and considered by the court—

The court doth order, adjudge, and decree that the said complainants are not entitled to the relief sought by their said bill, or to any part thereof, and that the said bill and this cause be, and the same shall stand, dismissed.

And it is further ordered, adjudged, and decreed that the said complainants and their sureties to their bond for the prosecution of this suit pay to the said defendants, respectively, their costs and charges in this behalf expended, to be taxed by the clerk of this court, and, if need be, let execution issue therefor after the expiration of ninety days from the filing of this decree.

HUGH L. BOND, *C. Judge.*

491 In the Circuit Court of the United States for the Western District of North Carolina, at Greensboro. In Equity.

HERMANN R. BALTZER and WILLIAM G. TAAKS, Complainants,
against
THE RALEIGH AND AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh and Gaston Railroad Company, John F. Pickrell, Jno. D. Whitford, and Wm. J. Hawkins, Defendants.

A decree dismissing plaintiffs' bill, and giving judgment against them for the costs, being this day filed, now, in open court, the plaintiffs and complainants, through their counsel, John N. Staples, Esq., pray an appeal from the decree and judgment of the court as aforesaid, to the Supreme Court of the United States, and assign as error the refusal of the court to grant the relief sought in the bill of complaint in this suit filed, and dismissing the same in said decree, &c.

HERMANN R. BALTZER AND
WILLIAM G. TAAKS,
By JOHN N. STAPLES,
Counsel and Solicitor.

The prayer and notice of appeal, this day made in open court by the plaintiffs and complainants in the above-entitled action from the decree dismissing their said bill, is this day entered of record and allowed. Bond filed.

July 3d, 1882. ROB'T P. DICK, *Judge.*

Walter P. Caldwell, one of the attorneys of record of the defendants, being present in court and accepted notice of appeal.

492 In the Circuit Court of the United States for the Western District of North Carolina. In Equity.

HERMANN R. BALTZER & WILLIAM G. TAAKS
against
THE RALEIGH & AUGUSTA AIR-LINE RAILROAD COMPANY, THE Raleigh & Gaston Railroad Company, John F. Pickrell, Jno. D. Whitford, and Wm. J. Hawkins, Defendants.

I, J. W. Payne, clerk of the circuit court of the United States for the said district, do hereby certify that the annexed & foregoing pages contain a true copy of the record & proceedings in the above-entitled case so full & entire as the same remains of record & on file in my office.

In testimony whereof, I have hereunto signed my name & affixed the seal of the said court, at Greensboro, this 2nd day of Oct., A. D. 1882.

[SEAL.] JNO. W. PAYNE, *Clerk.*

Endorsed on cover: W. N. Carolina C. C. U. S. No. 330. Herman R. Baltzer and William G. Taaks, appellants, *vs.* The Raleigh & Augusta Air-Line Railroad Co., The Raleigh & Gaston R. R. Co., John F. Pickrell, John D. Whitford, and William J. Hawkins. Filed 9th October, 1882.

115-634

FILED
OCT 10 1885
JAMES H. McKINNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM.

IN EQUITY.

HERMANN R. BALTZER and WILLIAM G. TAAKS,
Appellants,

against

THE RALEIGH AND AUGUSTA AIR LINE RAILROAD COMPANY, THE RALEIGH AND GASTON RAILROAD COMPANY, JOHN F. PICKRELL, JOHN D. WHITFORD, and WILLIAM J. HAWKINS,
Appellees.

Brief and Argument

FOR APPELLANTS.

AUGUSTUS H. GARLAND,
JOHN N. STAPLES,
Of Counsel for Appellants.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1885.

HERMANN R. BALTZER and WILLIAM G. TAAKS,
Appellants,

against

THE RALEIGH AND AUGUSTA AIR LINE RAILROAD COMPANY, THE RALEIGH AND GASTON RAILROAD COMPANY, JOHN F. PICKRELL, JOHN D. WHITFORD, and WILLIAM J. HAWKINS,
Appellees.

Appeal from the Circuit Court of the United States for the Western District of North Carolina.

IN EQUITY.

BRIEF AND ARGUMENT OF AUGUSTUS H. GARLAND AND JOHN N. STAPLES,
Of Counsel for Appellants.

NATURE OF SUIT.

This was a suit in Equity, brought by the appellants in error, against the defendants, at Greensboro, in the Western District of North Carolina, on the 18th day of October, A. D. 1878, for the recovery of the sum of $93,615.62, with interest thereon from the 2d day of November, 1868, at 7 per cent., for the purchase of iron used in the construction

of the Chatham Railroad in said State: the said sum of ninety-three thousand six hundred and fifteen and $\frac{43}{100}$ dollars being a balance due the appellants upon the contract hereinafter set out.

Statement of Facts.

(1.) At the time of the said contract the appellants in error were engaged in business in the City of New York as "bankers and negotiators of securities," and were residents of said City and State of New York.

(2.) The defendant, the Raleigh and Augusta Air Line Railroad Company, known then as the *Chatham Railroad Company*, was a corporation duly chartered by the laws of North Carolina, operating and constructing an unfinished line of railroad from Raleigh, North Carolina, to the South Carolina State line.

(3.) *William J. Hawkins*, one of the defendants in this suit, was the President of said company, and *John F. Pickrell* and *John D. Whitford*, other defendants in this suit, were *agents* of said company, for the purposes hereinafter mentioned.

(4.) In order to enable the said Chatham Railroad Company to construct operate and equip its said road, as aforesaid, the Public Treasurer of the State was authorized by an ordinance of the Convention of 1868, ratified the 11th March, to issue to the said company coupon bonds of the State to the amount of $1,200,000, upon the conditions in said ordinance expressed; and afterwards, on the *15th day of August*, 1868, by an act of the General Assembly of North Carolina, the Public Treasurer of the State was likewise directed and authorized to issue to the said company, upon the terms therein expressed, the further sum of $2,000,000 of the coupon bonds of the State, the *proceeds of said bonds to be used by the company* for the purpose of constructing and equipping its said road as aforesaid. All of these bonds, to wit, $3,200,000, were issued by the

Public Treasurer, and duly delivered to the said *William J. Hawkins*, for the purposes hereinbefore expressed.

See Ordinance of Convention of North Carolina, 11th Mch., 1868, ch. 19, pp. 62, 3, 4.

Laws of the State of North Carolina, special session, beginning the 1st of July, 1868, chapter 14, page 15. (Private Laws of said special session.)

See also the answer of William J. Hawkins, page 49 of the Record. "*Original*" [77].

(5.) As a condition precedent to the delivery of the two thousand bonds authorized to be issued under the act of August the 15th, 1868, the President of the said Chatham Railroad Company was required to deposit with the Public Treasurer of the State coupon bonds of the company, properly signed and sealed, in amount equal to that authorized to be issued by the State, bearing like interest and date, and payable at the same time and place, and "to secure the principal and interest of said bonds" it was provided that by said act of the 15th of August the State should have a *lien* upon all the estate of said company, both real and personal, which it then had, or might thereafter acquire, between the points mentioned in said act, * * * together with all the rights, franchises and powers thereunto then belonging or might thereafter belong to said company, * * * "which *lien* shall be more effectually secured by a *first mortgage*, duly executed by said company to the State," with certain conditions with respect of foreclosure, &c., in said act set out.

(6.) In pursuance of the requirements of the said act and for the purpose of securing the delivery and possession of the said two thousand bonds, being duly authorized and empowered thereto by the said Chatham Railroad Company, the said William J. Hawkins as President, with two directors of said company, on the *21st day of September, A. D.* 1868, duly executed and delivered to the Public

Treasurer of the State a mortgage in words and figures as follows, to wit:

CHATHAM RAILROAD COMPANY
to
THE STATE OF NORTH CAROLINA.

NORTH CAROLINA,
Wake County.

Whereas, the General Assembly of North Carolina, by act ratified August 15th, 1868, entitled "An act to amend the charter of the Chatham Railroad Company, authorized the issue of coupon bonds of the State to an amount not exceeding $2,000,000, on condition that the Chatham Railroad Company shall deposit with the Public Treasurer the coupon bonds of said company, like amounts, and to secure the principal and interest of said coupon bonds, it was enacted that the State of North Carolina shall have a lien upon certain estate and rights of said company in said act and hereinafter mentioned, said lien to be more effectually secured by a first mortgage duly executed by said company; and whereas, said Chatham Railroad Company, by their stockholders in meeting for that purpose duly called, did accept said act as an amendment to their charter, and did subsequently deposit with the Public Treasurer the coupon bonds of the company aggregating two million dollars, dated 1st October, 1868, bearing six per cent. interest, the principal payable at the end of thirty years from the date thereof, the coupons of interest payable semi-annually at the National Bank of the Republic, in the City of New York.

Now, therefore, this deed of mortgage, executed by the Chatham Railroad Company to the State of North Carolina, this 21st day of September, 1868, witnesseth that the said Chatham Railroad Company, to carry into effect the said act, for the consideration aforesaid, as well as of ten dollars to said company paid, hath bargained and sold, and by these presents doth bargain and sell unto the State of North Carolina all the estate of said company, real and personal, which they may now have, or may hereafter ac-

quire, between the points of intersection with the Western Railroad and the South Carolina line, including that at both points, together with all the rights, franchises and powers thereunto belonging, or that may hereafter belong to said company, in respect of that portion of their line, to have and to hold to the said State of North Carolina; provided, nevertheless, that if the said Chatham Railroad Company shall pay and continue to pay to the State the semi-annual interest on its bonds deposited with the Public Treasurer as aforesaid within twenty-four months next ensuing after the said interest shall become due, and shall further pay the principal of said bonds within twelve months next ensuing after the said principal shall have matured and become due, then the foregoing conveyance shall be void and of no effect, otherwise remain in full force and virtue.

And it is further covenanted and agreed that if the said Chatham Railroad Company shall fail to pay the semi-annual interest on its bonds for twenty-four months after such interest shall become due, or to pay the principal of said bonds for twelve months after their maturity, the Board of Internal Improvements for and on behalf of the State may enter upon and take possession of all the property hereinbefore specified, and dispose of the same by sale so as to protect the State.

In testimony whereof, the Chatham Railroad Company, by its President, W. J. Hawkins, and two of its Stockholders and Directors, have hereunto signed and sealed this deed the day and year above written.

W. J. HAWKINS,
Prest. C. R. R. Co.
C. H. K. TAYLOR,
Director of C. R. R. Co.
S. S. ROYSTER,
Director of C. R. R. Co.

Witness:
THOMAS BADGER.

Which mortgage was duly admitted to probate and registered as the law directed.

See Record, Exhibit "C," pp. 23, 24, 25.

(7.) In 1868, 1869, 1870 and 1871, the defendant John F. Pickrell was a resident of the City of New York and engaged in business on Wall Street as a "broker and banker." In the year 1867, or 1868, he was introduced "very favorably," in the St. Nicholas Hotel, to the other defendant, John D. Whitford, then President of the Atlantic and North Carolina Railroad, by General Gwinne, who desired Pickrell to assist Whitford "in issuing some mortgage bonds."

See Pickrell's testimony, Record, pp. 60, 61, Ans. to Qs. 3, 13 and 14.

And from this time Whitford and Pickrell became friends.

(8.) Afterwards, on the *13th day of May*, 1868, Whitford wrote from Newbern, N. C., to Pickrell in New York, among other things, as follows, to wit:

"I have, on my arrival in New York, a matter to lay "before you in which I think there is much money. *It is* "*a railroad contract*, and stock in railroads, which would "g've us control of these State bonds to a *million or two*, "&c., &c. If you can aid *us* in the start with money, as "you proposed to do in the Wilmington C. and R. road, "*we* can make for you something worth having.

"*There will not be a particle of risk, as we will have all* "*in our own hands.* What I wish you to do is to see "some of *your moneyed* friends, as soon as convenient, "that they may join us, if you deem our scheme entirely "feasible, which I am satisfied you will when I have an "opportunity to explain it to you. *Parties here of the* "*highest standing will be interested with us and may call* "*on you with me when I reach your city, which I expect* "*to do next week.*"

"Keep all this to yourself, except to manage it as before "suggested, with your Northern friends."

* * * * * * *

(Signed) "JOHN D. WHITFORD."

See Exhibit P No. 1, Record, pp. 94, 95.

And on the 21st day of August, 1868, dated at Raleigh, and addressed to John F. Pickrell, New York, the said John D. Whitford wrote as follows:

"RALEIGH, August 21st, 1868.

MR. JOHN F. PICKRELL, New York.

MY DEAR SIR: *I* have concluded to *visit you* next week with *one of the parties authorized to close contract*, &c. Passing events or coming events require *us* to act hastily, hence *my* contemplated visit to *you* in a few days. *Our bills* have *all* passed the Legislature and the Legislature adjourns on Monday next. *We shall have a large number of bonds to sell*, and about *ten thousand tons of iron to buy at once*, but you had better not speak of these matters until our arrival.

Yours truly,

(Signed) JOHN D. WHITFORD."

See Record, Exhibit P No. 2, p. 95.

(9.) Very soon after this letter was written, between that date and the 1st day of September, 1868, John D. Whitford, in company with *William J. Hawkins*, visited New York, and called upon John F. Pickrell at his place of business, and on the 1st day of September, 1868, William J. Hawkins borrowed from John F. Pickrell the sum of one hundred thousand dollars.

See Pickrell's testimony, Record, p. 62, Ans. to Qs. 21 and 22; Exhibit P. No. 4, Record, p. 96.

(10.) After "*various conversations*" between *Hawkins*, *Whitford* and *Pickrell*, in New York, concerning the building of the Chatham Railroad, without ever having been on said road or knowing anything about it, except

what was learned from Hawkins and Whitford in conversation, in which it was represented that the work on the Western North Carolina Road was the most *expensive* in the State, John F. Pickrell submitted to the said William J. Hawkins the following proposition in writing, to wit:

NEW YORK, Sept. 1st, 1868.

To the President of Chatham R. R. Co.,
WILLIAM J. HAWKINS, Esq.:

SIR,—On behalf of myself and associates, viz.: Messrs. Greenleaf, Norris & Co., and Charles Gould, Esq., I propose as follows:

1st. To contract to do the entire work on your road, such as grading, superstructure, bridges, masonry, &c., &c., and furnish all the materials for same, *at your Engineer's estimates*, provided they are not less than is allowed for similar work on the Western North Carolina Road.

2d. The above is based upon my having the contract to supply your road with all iron required; also all locomotives, spikes, chairs, and equipments generally, at prices to be agreed on between us, so soon as the condition of your company will permit of the making of such contracts.

3d. In accordance with *our various conversations whilst you were here*, I further agree and propose to accept your State bonds, at prices to be fixed by us, for all supplies contained in Prop. 2, and further to loan and supply you with all the money you shall require, from time to time, for the purpose of your operations, in building and supplying your road.

(Sgd.) JOHN F. PICKRELL,
For Self and Associates.

Signed in Duplicate.

Accepted subject to the approval of the Board of Directors.

(Sgd.) W. J. HAWKINS,
Prest. Chatham R. R. Co.

Which was accepted by said W. J. Hawkins—"subject to the approval of the Board of Directors."

See *Record*—Testimony of John F. Pickrell, p. 63; Ex. P. No. 2, pp. 95-6; also Ans. to Q. 37, p. 65.

The understanding at the time between Hawkins, Whitford and Pickrell being that *Hawkins* and *Whitford* would supervise the work thus contracted to be done.

Pickrell's testimony, Record, p. 67, Ans. to Qs. 49, 50.

And although the proposition contained the clause, "On behalf of myself and associates, viz.: Greenleaf, Norris & Co., and Charles Gould, yet neither Greenleaf, Norris & Co., or Charles Gould, agreed to said contract, or were parties to it, or knew anything about it.

Record, p. 66, Pickrell's testimony, Ans. to Q. 42.

(11.) About this time, to wit, about the 1st of September, 1868, the said John D. Whitford and John F. Pickrell were introduced to the plaintiffs and appellants in error, Baltzer & Taaks, by Schepeler & Co., of New York, who were then negotiating with Whitford and Pickrell, for the sale of *ten thousand* tons of iron for the Chatham Railroad, and it was represented to said Baltzer, by the said Whitford and Pickrell, that the iron was to be paid for out of the proceeds of North Carolina State Bonds, some of which were to be issued in exchange for first mortgage bonds of the Chatham Railroad. That the said Whitford, especially, was acting as the agent of the Chatham Railroad Company, and the said Pickrell was to attend to the business; Schepeler & Co. not having sufficient means to carry so large a transaction, had sought Baltzer & Taaks for their aid in the matter; upon the said representations of Whitford and Pickrell, the said Baltzer & Taaks expressed their willingness to aid in furnishing the said iron, when a paper writing purporting to be the draft of a

contract between Baltzer & Taaks of the first part, and John D. Whitford and John F. Pickrell of the second part, was prepared, which was taken into possession by the said Whitford and Pickrell, for the purpose, as they declared, of sending it to William J. Hawkins, President of the Chatham Railroad Company.

See Record, Baltzer's test., pp. 154–5, Ans. to Qs. 3, 4 and 5.

Afterwards the said paper was returned to Baltzer & Taaks, variously modified, Whitford's name being left out, and in a number of places *William J. Hawkins* inserted, the name of the deposit bank being changed from the "United States Trust Company" to the "Continental National Bank."

Record, p. 155, Baltzer's test., Ans. to Q. 6.

(12.) About a week after the plaintiff Baltzer met Whitford and Pickrell, he was introduced by them to *William J. Hawkins, President of the Chatham Railroad Company*, at their office in the City of New York, *who* represented to Baltzer & Taaks that *Whitford* was the *agent* of the *company*, "and would see that all went right." (Baltzer's test., Record, p. 156, Ans. to Q. 11.) The said *Hawkins* further represented to said *plaintiffs* the *validity* and *soundness* of North Carolina bonds, and expressed himself pleased that plaintiffs intended and expected to take an interest in the introduction of the bonds in foreign markets, &c. Hawkins shortly thereafter left New York, stating to Baltzer, whom he had visited several times, that he would leave Whitford in New York, who "would see to everything." (Record, Baltzer's test., p. 157, Ans. to Qs. 12 and 13.) Pickrell having stated to Baltzer that the *Chatham Railroad Company* was to provide means for the payment of the iron, and it having been represented to Baltzer & Taaks that the bonds for that purpose were to be *valid* bonds of the State of North Carolina, secured by both a statutory and contract lien to the State upon the real and personal property of the Chatham Railroad Com-

pany, whereby the said bonds would have unquestioned value, on the *24th day of September, A. D.* 1868 (Baltzer's test., Record, p. 163, Ans. to Q. No. 53), the contract bearing date *the 11th day of September, A. D.* 1868, marked *Exhibit "A"* (Record, p. 18), and a few days later the contract marked *Exhibit "B"* (Record, p. 19), likewise bearing date the *11th day of September, A. D.* 1868, were duly executed by the parties thereto, and are in words and figures, as follows, to wit:

EXHIBIT "A."

THIS AGREEMENT, made this eleventh day of September, one thousand eight hundred and sixty-eight, by and between Messieurs Schepeler & Company and Messieurs Baltzer & Taaks of the City of New York, parties of the first part, and John F. Pickrell, also of the City of New York, party of the second part, witnesseth:

I.

The parties of the first part agree to sell and deliver to the party of the second part, and the party of the second part agrees to purchase and take of the parties of the first part ten thousand tons of English or Welsh iron rails of well-known, good brands (twenty-two hundred and forty pounds to the ton, English or American weight), of the pattern known as Erie T to be slotted or notched for the ordinary American lip chain, and to be of the usual weights and lengths of what are known in the markets as from fifty to fifty-two pounds per yard, at the price of seventy-nine dollars and thirty-six cents, legal tender United States currency; this price being based upon the present United States duty of fifteen dollars sixty-eight cents gold, if such duty shall be increased the party of the second part is to be charged with such increase, if actually paid by the parties of the first part, if diminish he is to be credited with the amount of the diminution, if the benefit of such diminution be actually obtained by the parties of the first part such

charge or allowance is to be made in currency at the rate of one hundred and forty-six for gold.

II.

The iron is to be laden on board ship at the place of shipment for transportation to the port of New York or at seller's option delivered at said port of New York within ten months from the date of this agreement. One thousand tons of said iron are to be laden on ship-board at the place of shipment for transportation to New York, or at seller's option delivered in New York within six weeks from the date of this contract. The remainder of said iron is to be laden on board ship at the place of shipment for transportation to New York or at seller's option delivered in New York at the rate of about three thousand tons in each three months.

Whenever any of such iron is delivered in New York the same at seller's option may be delivered from warehouse or from on board ship in the port of New York, if delivered from warehouse to be delivered at the water's edge.

It is expressly understood that the parties of the first part do not undertake to deliver all the iron within ten months from the date hereof, but do undertake to have all the iron not delivered from warehouse as aforesaid placed on board ship at the place of shipment ready for transportation to the port of New York within the time aforesaid.

III.

The iron is to be paid for as follows: The party of the second part is to deposit with the Continental National Bank on or before the execution of this agreement such an amount of the bonds of the State of North Carolina as will at the market price on the day of deposit, be equal to the whole purchase money for the said ten thousand tons of iron, and fifteen per cent. in addition thereto, which margin of fifteen per cent. is to be kept good until the full performance of this contract. The said bonds are to be held by said bank subject to the joint *order* of the

parties of the first and *second part* and *Willian J. Hawkins* or his attorney, or the survivors of said parties respectively, on the presentation of a warehouse receipt or ship's delivery order for *any lot of said iron* the party of the *second part* and said *William J. Hawkins* or the survivor of them are to *join* with the *parties* of *the first part* in drawing an order on said bank in favor of *the parties* of the *first part* for *so many of the said bonds as will at the market price thereof on the day of drawing, equal the sum payable for such lot of iron at the price of seventy-nine dollars and thirty-six cents per ton* as aforesaid, *or pay that amount in money.*

Upon presentation of a bill of lading for any lot of such iron placed on ship-board for transportation to the port of New York, or Norfolk, Virginia, the *party* of the *second part* and the said *Hawkins* or the survivor of them, *shall* join with the *parties of the first part* in drawing an *order* on the said bank in favor of the said *parties of the first part for so many* of *said bonds* as will at the market price thereof *on the day* of *drawing equal the sum due for the iron mentioned in the bill of lading* at forty-nine dollars and forty-six cents per ton, the *balance payable for such iron, namely, twenty-nine dollars and ninety cents per ton shall be paid in like manner on the* arrival of the vessel containing the same at the port of New York, or the port of Norfolk. Notice shall be given to the party of the second part or his personal representatives of the arrival of any ship containing iron, and he or they are to be ready to receive the same whenever the ship is ready to discharge.

In the event of the *death* of the said *party* of the *second* part, and *no* appointment of a personal representative at the time, *notice* is required to be given, such *notice* may *be given to the said William J. Hawkins* by *letter addressed to him at the City of New York.* If at any time the *party* of *the second part* or his *personal representative*, or the *said William J. Hawkins*, or *his attorney*, or

the survivor of them shall refuse to join in drawing an order for the amount due for iron as aforesaid, the parties of the *first part may* retain the warehouse receipt or bill of lading or ship's delivery order, and *may sell the iron* for which *payment* has been refused, at any time after five days' notice of intention to sell, either at public or private sale, for and on account of the party of the second part or his personal representative, who shall be liable to reimburse the parties of the first part any loss and such resale, such notice of intention to sell to be given by depositing the same in the General Post Office in the City of New York, addressed to the party of the *second part* or his personal representative *or* the said *William J. Hawkins*, in the event of the death of the said party of the second part and the non-appointment of any personal representative at the said City of New York.

IV.

If any cargo of the said iron shall be lost at sea, or while in port, or for any cause whatsoever beyond the control of the parties of the first part, shall fail to arrive, the parties of the first part shall not be held in any manner liable, or be bound to replace the same. In case of the loss of any iron in transit, the parties of the first part agree to refund to the party of the second part the amount paid on the same, as soon as the insurance thereon shall be legally due from the underwriters who shall have insured the same.

V.

The warehouse receipts or ship's delivery order and bills of lading hereinbefore mentioned, are to be presented to the party of the *second part*, or his *personal representative*, *or* the said *William J. Hawkins at* the present *office* of the *said party* of the *second part*, in *the City of New York*, *unless he* shall hereafter designate some other place in the City of New York for that purpose.

VI.

It is *understood* that the said *bonds* are *deposited* as a *fund out* of which to *pay for said iron*, and that the *parties of the first part are to have a lien on the same, for the faithful performance of this contract, on the part of the party of the second part, but* it is *also understood* that the *parties of the first part do not look solely to the said bonds for payment, and if for any reason they should at any time fail to constitute a fund for payment*, the *parties of the first part are nevertheless to be paid for iron at the same rates and times as hereinbefore provided.*

VII.

The party of the second part reserves the right to sell any or all of the bonds deposited with said bank, and, in case of sale, the money realized for the same, or a sufficient amount to cover the price of all said iron, and fifteen per cent. in addition thereto, shall be placed with said bank on the same terms, and represents the said bonds for all the purposes of this contract.

The said bank shall deliver the bonds sold on the presentation and delivery of such joint order as aforesaid. The *parties of the first part shall have their election to draw, in payment for iron, bonds, or money, the proceeds of bonds*, if any shall have been *substituted in the place of bonds sold.*

VIII.

On receiving timely notice from the party of the second part the parties of the first part agree, if it shall occasion no delay, or not interfere with any pending arrangement or negotiation, to endeavor to place such portion of the iron as they may be requested on board ship for transportation to the port of Norfolk, Virginia; and for all iron shipped to Norfolk instead of New York the party of the second part agrees to pay, in addition to the price before mentioned, the difference between the cost of freight to Norfolk

and what would have been the cost of freight if shipped to New York.

IX.

In the event of a *breach* of this agreement, by *either* of the *parties* to the same, the measure of damages recoverable by the parties of the first part shall be the profits which they can, with reasonable certainty, show that they otherwise would have made, and, in addition thereto, any loss sustained on any resale of iron. And the measure of damages recoverable by the party of the second part shall be the difference between the costs of replacing the iron which the parties of the first part may fail to deliver and the price at which they were to deliver.

In testimony whereof the said parties to these presents have hereunto subscribed their names, the day and year first hereinbefore written.

(Signed) SCHEPELER & CO.,
By John T. Schepeler.
(Signed) BALTZER & TAAKS,
By H. R. Baltzer.
(Signed) JOHN F. PICKRELL.

In the presence of:
(Signed) GEORGE H. STURR.

EXHIBIT "B."

Whereas, Messrs. Schepeler & Co., Messrs. Baltzer & Taaks, and John F. Pickrell have entered into an agreement of even date herewith, by which means the said Schepeler & Co. and Baltzer & Taaks agree to sell and deliver *on certain terms* therein mentioned *ten thousand tons of iron rails* to the said John F. Pickrell, a *copy* of which said agreement is *annexed* hereto, and *which said agreement provides for the payment for said iron by said Pickrell* by *the appropriation of certain bonds of the State of North Carolina in the manner set forth in said agreement:* Now, therefore, *in consideration* of the *premises*

set forth in *the said agreement and* of the *undertaking of the parties of the first part therein mentioned*, as *therein expressed, and as hereinafter expressed, I, William J. Hawkins, hereby agree* that *fourteen hundred bonds* of the State of North Carolina, each for $1,000, numbered from 1,600 to 3,000 inclusive, which are now on deposit in the Continental Bank of the City of New York, subject to *my order* as *President of the Chatham Railroad Company of North Carolina*, shall remain on deposit in said bank, subject to the *joint* order of the parties mentioned in said contract as being provided, while said *contract is being performed*, for the *purpose of providing for the payment of said iron, and as security for the performance of said contract as therein provided*; and *I* agree to unite in drawing the orders therein provided for at the times and in the manner therein set forth; *provided, however*, that it is hereby *distinctly understood* and *agreed* that whenever *any delivery of said bonds is to be made*, and *any order for such delivery is required pursuant to said contract, I am to have the option and right to pay in money the sum payable under said contract for the iron*, in respect to which such delivery of bonds is required, at the contract price; that is to say, at the rate of forty-nine dollars and forty-six cents per ton on the presentation of the bill of lading, and twenty-nine dollars and ninety cents per ton on the delivery of the iron; and upon such *money payments being made by me, I shall have the right to withdraw from deposit the bonds which otherwise would have been delivered under said contract*, and *such bonds shall be delivered to me by said Continental National Bank on the presentation of such joint order as aforesaid*, such option and right be exercised by me within five days after being notified in the manner provided in the contract of the right of said parties of the first part therein named to a delivery of bonds pursuant thereto.

It is also hereby expressly provided that in case of loss of the iron, or any part thereof, on shipboard between the port of shipment and the port of entry or delivery all pay-

ments made on account thereof are to be refunded by said Schepeler & Co. and Baltzer & Taaks as soon as such loss is ascertained.

New York, September 11th, A. D. 1878.

W. J. HAWKINS,
President Chatham Railroad Company.

Witness:
JOHN D. WHITFORD.

Thus it was this contract was made and (as Baltzer says in his testimony, Record, p. 167, Ans. to Q. 74) understood at the time to be a contract with the *Chatham Railroad Company*—"*The name of John F. Pickrell*" (in Exhibit "A") "*having been used with the concurrence of all parties* "*simply as a matter of form for the more convenient exe-* "*cution of the contract, he residing in the City of New* "*York, whilst the Chatham Railroad Company was a* "*corporation in another State.*"

(13.) Under this contract the *Chatham Railroad Company received* and *used* in the *construction of its road* the following deliveries of iron:

On the 12th day of October, 1868 . . .	630 tons.
On the 2d day of November, 1868, the following deliveries:	
No. 2, 770 tons; No. 3, 330 tons; No. 4, 1,004 tons	2,104 tons.
Making in all	2,734 tons.

For which said 2,734 tons of iron the defendant company was indebted as follows, to wit:

For	630 tons rec'd Oct. 12th, 1868 . .		$50,023 51
For	770 " " Nov. 2d, 1868 . .		61,132 11
For	330 " " " " " . .		26,252 82
For	1,004 " " " " " . .		79,713 79
Total,	2,734 tons, at contract price . . .		$217,122 23

And paid thereon the following amounts, to wit:

Oct 12th, 1868, cash . . .	$50,023 51	
Nov. " " . . .	73,483 10	
Total paid on 1, 2, 3 and 4 deliveries . .		123,506 61
Leaving a balance due plaintiffs of .		$93,615 62

See Complainants' Bill, §§ 18, 19, 20.
See Deft. R. & A. A. R.R. Ans., §§ 16, 19, 20.
See also Pickrell's test., Record, p. 104; Exhibit P No. 8.

(14.) Afterwards, to wit, on the 11th of August, 1869, the complainants relieved defendants from obligation to receive any more iron under said contract.

(15.) That, for the purpose of providing for the payment of the balance as aforesaid, to wit, the sum of $93,615.62, one hundred and fifty (150) of the bonds which had been "*deposited as a fund out of which to pay for said iron*," were delivered to Baltzer & Taaks to be *sold* and *accounted for as per contract;* when, in a short time, to their astonishment, the said *bonds* became valueless as a security, unsalable upon the markets, excluded from the Stock Exchange of New York, and wholly worthless "*as a fund out of which*" money could be realized "*to pay for said iron.*"

(16.) Immediately the defendants were notified to take up the said bonds and payment demanded of them (Bill and Answer, Article 21); but, up to this time, the defendants have failed and wholly neglected to pay plaintiffs the said balance of $93,615.62, which is justly due and owing to the plaintiffs by the defendants, with interest thereon from the 2d day of November, 1868, at *seven* (7) *per centum per annum.*

(17.) That, prior to the issuing of the bonds authorized by the Act of August the 15th, 1868, there had come into

the hands of the said William J. Hawkins, as President of the Chatham Railroad Company, *one million two hundred thousand dollars* of bonds issued under the ordinance of the Convention of March the 11th, 1868, which, in addition to *the two millions of bonds* issued under the Act of August the 15th, 1868, made a total of *three millions two hundred thousand dollars* ($3,200,000.00) of *bonds* dedicated by law to the construction of the Chatham Railroad, which came into the possession of said Hawkins. That the Convention bonds were put upon the market and a large amount of money realized from their sale, and at the time of the last delivery of iron, or when the last cash payment for iron was made, to wit, about the 21st day of November, 1868, there was in the custody of the defendant Pickrell, as *agent* of the Chatham Railroad Company in New York, a large sum of money belonging to the Chatham Railroad Company, which had been realized by the sale of Convention, and other North Carolina bonds, issued by the State for the benefit of the Chatham Road, and more than sufficient to pay plaintiff's debt.

(18.) After the bonds which had been hypothecated with Baltzer & Taaks became worthless, and, as admitted in the answer of the defendant company to plaintiffs' bill (Art. 29), "*the validity of these bonds having been questioned,* * * *and it therefore becoming improper to sell or dispose of them,*" on the 3d day of December, 1868, the said Hawkins directed the said *Pickrell as agent* as aforesaid to turn over to *Jno. D. Whitford as agent* the funds thus held by him, which he at once did, to the amount of $386,475.92, the greater part of which sum the said Whitford, by direction of the said Hawkins, invested in United States bonds, and removed the same from New York and out of the reach of the plaintiffs.

(19.) On the 18th day of December, A. D. 1868, the General Assembly of North Carolina passed a certain act, entitled: "*An Act to reënact and confirm certain acts of the General Assembly authorizing the issue of State bonds*

to and for certain Railroad Companies," *Chapter VII., page* 48, *Public laws of* 1868 *and* '9, the *V. section* of which provided, among other things: that the Public Treasurer should subscribe to the capital stock of the Chatham Railroad Company in behalf of the same *two millions* of dollars, to be paid for by delivering to the President of the company coupon bonds of the State at par, dated *October the* 1*st*, 1868, and payable in thirty years thereafter, bearing six *per* cent. interest, payable *semi*-annually; principal and interest payable in New York; but the said stock was subscribed and the bonds were to be issued upon the condition that the Chatham Railroad Company was to surrender to the State a like amount of the bonds issued for the benefit of that company under the act of the 15th of August, 1868. It further provided that the said bonds of the 15th of August, when surrendered, should be cancelled, and that the stock subscribed for by the State should be *preferred stock*, and should pay a dividend of six *per* cent. before any dividend should be declared on the other stock. The 5th section of the act provided for the levy of a special tax upon the property of the State, to pay the interest upon the bonds of the State to be issued under that act.

See Public Laws, 1868–9, *Ch. VII., pages* 48, 49, 50.

(20.) On or about the 29th of December, 1868, A. J. Galloway, on behalf of himself and other taxpayers of the State, applied for an injunction against the Treasurer of the State, D. A. Jenkins, and the Chatham Railroad Company to a Judge of the Superior Court of the State (said Court having jurisdiction), to prevent the said Treasurer from subscribing for said stock and issuing State bonds in payment thereof, and the said Chatham Railroad Company from accepting such subscription and receiving said State bonds, as provided for and enacted in sections 4 and 5 of said act of the 18th of December, 1868. And at January Term, A. D. 1869, of the *Supreme* Court of the State, the matter of *injunction* was heard upon appeal by the plaintiffs, who

had been thrown in the Court below, and the *Court decided*, *Pearson, Ch. Justice*, delivering the opinion, that the act of the 18th of December, 1868, under article 5, section 5, clause 2, of the State Constitution, was *unconstitutional*, and the Treasurer and railroad company were enjoined from further action under said act, and at the same Term of the Court, this case is *cited* and *approved* in University Railroad Co. *vs.* W. M. Holden *et al.*

See 63*rd N. C. R., Galloway* vs. *Jenkins & R. R. Co., p.* 148, *and U. R. R. Co.* vs. *Holden et al., p.* 410.

(21.) On the 20*th day of January* A. *D.* 1870, the Senate of North Carolina passed a resolution providing for the appointment of a Committee of Investigation, consisting of three, "to enquire, ascertain and report to the Senate without delay": (1) The number of bonds issued by the State to railroads since the 1st of May, 1865. (2) To whom issued and when? (3) How the bonds had been disposed of, by whom, to whom, and when sold, for what sum, and, if at different sales, the amount sold and received at each sale. (4) Whether there were any bonds unsold, where they were, what use had been or was being made of them, and what use had been or was being made of the money arising from such sales.

Public Resolutions, Acts of 1869–70, p. 337.

The Hon. Thomas Bragg, the Hon. Samuel F. Phillips and William L. Scott, Esq., were appointed to this Committee, and were invested with "plenary powers to send "for persons and papers, and administer oaths, the viola-"tion of which shall be perjury." And in pursuance of the authority thus conferred upon them they proceeded with the investigation of the matters referred to in the resolutions, and made report thereof to the Senate during the month of March of said session of 1869–70, which report is known as Document No. 33, and particularly referred to in the testimony of W. W. Vass, Treasurer.

See Record, p. 212, Ans. 68, 69, 70, and pp. 230, 231, 232, 233.

(22.) On the 5th day of February, A. D. 1870, the General Assembly of North Carolina passed another act entitled "*An "Act to be entitled an act to restore the credit of the State "and to facilitate the construction of our unfinished rail-"roads.*" Which act made it the duty of the Presidents, &c., of railroads who had secured bonds * * * for the construction of railroads * * * under legislative enactment, or ordinances of Convention subsequent to May, 1865, to file before the Governor and Superintendent of Public Works a statement showing: (1) What amount of bonds had been received. (2) What amount had been sold, in what markets and at what prices, with dates of sales. (3) What amount had been or were then hypothecated, to whom, when, and for what purpose, and amount realized thereon. (4) What amount of bonds remained on hand unsold, and how much had been received on unsold bonds, &c., &c. * * * That by the 3d section of said act it was further provided, that all unsold bonds remaining in the hands of such officers should be returned to the Public Treasurer, and in case the bonds had been sold or converted into money or other securities, such money or other securities not actually expended upon the *road*, should be returned to the Public Treasurer.

Public Laws 1869–70, pp. 78–9, §§ 1–3.

(23.) On the 4th day of *March*, 1870, William J. Hawkins submitted to the said Committee of Investigation a report, by reference to which it will be seen from the sworn testimony of the said William J. Hawkins, President as aforesaid, that, on *20th of August*, 1868, he received $1,200,000 dollars of Convention bonds of the 11th March, 1868, and on the 19th of October he received $2,000,000 of bonds of the act of 15th August, 1868. "All of the $1,200,000 or Convention bonds had been sold. On the 21st Dec., 1868, J. F. Pickrell sold 387 bonds for net $238,005, at about the same time sold (?) Pickrell one thousand bonds at 60 cents, amounting to $600,000. One hundred were sold (?) to M. S. Littlefield for 60—or $60,000. On the 29th May, 1869, 8

were sold to State National Bank Raleigh, netting $8,194.74. Making in all 1,502 bonds, *amounting in the aggregate to the sum* of $906,196.74. Two hundred and twenty-five (225) of these bonds were hypothecated by Pickrell—"our banker"—I don't know with whom, on which was raised $100,000, but paid back in December by proceeds of sales of bonds; and 48 *bonds were hypothecated with Pickrell & Co.* for iron. "I can't tell who had the bonds." "There was paid out on account of construction materials, equipments, engineering, pay of officers, employees, and incidental expenses, &c., $685,569.47, leaving a balance on hand of $250,067.82, consisting of 200 U. S. bonds which cost $220,000, and money on deposit in Raleigh, $28,067.82."

Record, p. 231.

(24.) On the 13th day of December, A. D. 1871, the General Assembly of North Carolina passed another act entitled "*An Act concerning the Chatham Railroad, amendatory "of certain acts, and authorizing a change of name,*" wherein it was provided, "*That the Chatham Railroad "Company shall hereafter be known by the corporate name "of the Raleigh and Augusta Air Line Railroad Com-"pany.*"

By Sec. 3 of said act the company is authorized to increase its stock not exceeding five millions, to issue guaranteed or preferred stock, and secure the same by *liens* or *mortgages* upon all the property, franchises and income of the company, or upon any portion thereof, with power to borrow money for railroad purposes, and "for loans made by them to issue bonds with or without the privilege of conversion into stock," and to pledge the property, franchises and income of the company by mortgage or otherwise, for the payment of the principal and interest of said bonds. And Section 5 provides, That the Raleigh and Augusta Air Line Railroad Company may at any time discharge the bonds of the Chatham R. R. Co. deposited with the Public Treasurer in the same manner as the Chatham R. R. Co. was authorized; and the Treasurer of the State was directed

to deliver to the R. & A. A. L. R. R. Co. all of the bonds of the Chatham Railroad Co. which had been deposited, &c.

Public Laws N. C., Acts of 1871-2, pp. 11, 12, 13.

On the *9th day of January*, 1872, the said act of the 13th of Dec., 1871, was accepted by the stockholders of the Chatham Railroad Company.

Record, p. 292, Resolutions, &c.

At an adjourned meeting of the stockholders of the said Raleigh and Augusta Air Line Railroad Company, held on the *19th day of July*, 1872, it was *resolved* that subscriptions to the capital stock of the company should be received from time to time to an amount which, with that already subscribed, should not exceed *thirty-two thousand shares*; twelve thousand shares of said stock to be a guaranteed stock entitled *under any circumstances* to receive eight (8) *per* cent. *per annum*, payable in *semi*-annual dividends of not less than four per cent. on the first days of July and January of each year: the holders of the guaranteed shares being privileged to receive any excess of four per cent. semi-annual dividends at any time payable on the common stock without impairing the guarantee of eight per cent. on the guaranteed or preferred stock. It was likewise *resolved* at said adjourned meeting that, for the purpose of securing the payment of said interest on the preferred stock and to protect the guarantee given, the company might at any time thereafter when deemed requisite execute a mortgage or first deed of trust on the property of the company, whereby the principal of the guaranteed stock, as well as the eight per cent. dividends thereon, should become a *first lien* on all the property, rights, franchises and privileges of the company, and a debt of the company *immediately payable* in the event of any default in the particular payment of the dividends so guaranteed.

Record, pp. 293, 294.

(25.) On the *1st day of March, A. D.* 1873, the General Assembly of North Carolina ratified an act entitled "*An*

Act to regulate mortgages by corporations, and sales under the same," and in *section* 3 of said act it is provided:

"*Provided, that all debts and contracts of any corpo-*
"*tion prior to, or at the time of the execution of any*
"*mortgage or deed of trust by such corporation, shall*
"*have a first lien upon the property, rights and fran-*
"*chises of said corporation, and shall be paid off or*
"*secured before such mortgage or deed of trust shall be*
"*registered.*"

Pub. Laws of N. C., 1872 and '3, ch. 131.

(26.) That about the 23*d of April*, 1873, the Raleigh and Gaston Railroad Company subscribed to and received one million of preferred or guaranteed stock of the Raleigh and Augusta Air Line Railroad Company.

Record, p. 290; and page 42, Ans. R. & G. R.R. Co.

(27.) On the 22*d day of March*, 1875, the General Assembly of North Carolina passed an act entitled "An Act explanatory of certain acts, &c.," by which an interpretation was put upon the ordinance of the Convention of the 11th of March, 1868, and the Act of the Assembly of the 18th day of Dec., 1868, to the effect that "the Raleigh and "Augusta Air Line Railroad Company is authorized to "pay off $1,200,000 of its second mortgage bonds held by "the State Treasurer with *any* bonds or other indebtedness "of the State," and in addition to this, that it was the intent and meaning of said ordinance and said act that *any internal* improvement bonds issued under acts passed prior to the war were likewise exchangeable under said acts, and the Public Treasurer was directed to receive such bonds from the company, &c.

Pub. Laws, 1874 and '5, ch. 245, p. 328.

(28.) On the 7*th day of April*, A. D. 1877, in pursuance of the acts of the General Assembly of N. C. of the 13th day of Dec., 1871, and the resolutions of the stockholders of the Raleigh and Augusta Air Line R.R. Co., of January the 9th and July the 19th of 1872, and to secure the pre-

ferred stock theretofore subscribed for by and issued to the Raleigh and Gaston Railroad Company, and to secure all payments due thereon, both of principal and dividends, the said Raleigh and Augusta Air Line Railroad Company, by its proper officers, duly made and executed to Charles M. Robinson, of New York, Charles C. Savage, of Philadelphia, and John W. Graham, of North Carolina, a mortgage or deed in trust, "whereby was conveyed to said "trustees all the said company's railroad rights, privileges "and franchises, and all its works and property of every "description," which deed has been duly *registered* in the County of Wake.

Record, p. 43, Ans. Raleigh & Gaston R.R. Co., and Record, pp. 290, 91–2, 3, 4 and 5.

(29.) Subsequent to the 22d day of March, 1875, the defendant company purchased upon the *market's bonds* other than those contemplated in the ordinance of 11th of March, 1868, and act of August 15th, 1868, for a *nominal* price, and exchanged them for the mortgaged bonds of the company deposited with the Public Treasurer, and under *color* of law and authority procured by and through the efforts of the defendant company, the defendant company succeeded in recovering all of their said mortgage bonds from the Public Treasurer of the State, using therefor *three hundred and fifty bonds, other than those issued under the acts of either the 11th of March, or the 15th of August*, 1868, without giving complainants notice of such intention, or an opportunity to substitute the mortgage bonds of the Chatham Railroad Company for the worthless bonds issued under the act of August 15th, which they held as a collateral security for the payment of iron furnished defendant company.

Record Ans. Co., § 35.

(30.) The following is the *restrictive* section of Article V. of the Constitution of North Carolina, respecting the *increase* of the public debt:

"*Sec.* 4.—Until the bonds of the State shall be at par, the

"General Assembly shall have no power to contract any "new debt or pecuniary obligation in behalf of the State, "except to supply a casual deficit, or for suppressing inva- "sion or insurrection, *unless it shall in the same bill levy* "*a special tax to pay the interest annually.* And the "*General Assembly shall have* no *power* to *give* or *lend* the "*credit* of *the State*, in *aid* of any *person, association or* "*corporation*, except to aid in the completion of such rail- "roads as may be unfinished at the time of the adoption "of this constitution, or in which the State has a direct "pecuniary interest, *unless the subject be submitted to a* "*direct vote of the people of the State, and be approved by* "*a majority of those* who shall vote thereon."

See Code of N. C., Vol. 2, p. 706.

In the foregoing statements we have taken the liberty to specifically and chronologically set out—and, perhaps, more at length than is usual—the various transactions, circumstances and conduct of the parties to the contract sued on, from its inception to the final abandonment of the complainants by the defendants, to the end that this Honorable Court may the more readily and conveniently acquaint itself with the facts upon which the complainants rely for the relief demanded, and to which they most conscientiously believe themselves justly entitled.

The allegations of the Bill, the admissions of the defendants in their several answers, and the proof adduced from the witnesses examined in the cause, as will fully appear from an inspection of the record, most clearly establish the facts to be as hereinbefore set out; and, it is a remarkable circumstance, and one much to the prejudice of *William J. Hawkins* and *John D. Whitford*, that neither one of them came forward as a witness to support the allegations contained in their several answers, or to prove the falsity of the allegations contained in complainants' bill, or to contradict the testimony of either John F. Pickrell or Hermann R. Baltzer, with respect to the part they, or either of them, played in this interesting but, to them, *questionable* transaction.

From the beginning to the end of the negotiations they have been conspicuous figures, but when the Courts are appealed to to remedy the wrong inflicted upon complainants, and an opportunity is given them to explain their connection with the matter, they do what Whitford telegraphed Pickrell to tell Baltzer to do, when Baltzer wanted his money—they "*keep quiet*," and most painfully quiet.

At the July Term, 1882, of the Circuit Court, held in Greensboro', the cause came to a final hearing upon the Bill, answers and proof, as contained in the record. After hearing argument on both sides, the Court filed a decree dismissing the complainants' bill upon the ground that they were not entitled to the relief sought, or any part thereof, by their said bill, and gave judgment in favor of the defendants for the costs. From this decree the complainants' appealed to this Honorable Court.

There was no opinion filed by the Court below.

Assignment of Error.

First.—The Court erred in dismissing complainants' bill.

Second.—The Court erred in not sustaining complainants' bill, and in not granting the relief prayed for therein.

More particularly the Court erred:

(1.) In that the Court refused to decree, that the contract as set forth in Exhibits "A" and "B" was the contract of the Chatham Railroad Company.

(2.) In that the Court refused to decree that under the said contract the Chatham Railroad Company was bound to deposit "for the purpose of providing for the payment "of said iron, and as a *security* for the performance of "said contract," good and valid bonds of the State of North Carolina, in amount "equal to the whole purchase "money for the said ten thousand tons of iron, and fifteen "*per* cent. in addition thereto," and to keep "good until

the full performance of the said contract," the said deposit.

(3.) In that the Court refused to decree that, the Chatham Railroad Company failed to perform that part of the contract.

(4.) In that the Court refused to decree that the bonds to be deposited under the said contract were to be deposited simply "as a fund out of which to pay for said iron," and not as a payment.

(5.) In that the Court refused to decree that the only interest complainants had in said bonds when deposited was a contract *lien* thereon "for the faithful performance of the contract," and that when said bonds failed to constitute a fund; "out of which payment could be realized," the Chatham Railroad Company became liable to the complainants in money, for the contract price of the iron.

(6.) In that the Court refused to decree that the Chatham Railroad Company did not part with its property in said bonds until the same should be sold and delivered, and that the said bonds and the money realized thereon from sales of the same, were nothing more or less than a trust fund in the hands of the company or its agents applicable to the payment of debts contracted in the construction of company's road; and that the transfer of the company's funds from *Pickrell, agent*, to *Whitford, agent*, in New York, Dec. 3, 1868, and the removal of the same out of the reach of the complainants, was a fraud upon them, for which they are entitled to relief.

(7.) In that the Court refused to decree that the said funds so transferred as aforesaid, and retained by the company, was a trust fund in the hands of the company applicable to the payment of the complainants' debt.

(8.) In that the Court refused to decree that in equity the complainants had the right to follow this fund in the hands of the company and have the company account therefor, and that the company is responsible to complain-

ants for the same or for so much thereof as is sufficient to liquidate complainants' debt.

(9.) In that the Court refused to decree that the bonds now held by complainants and which were deposited by the Chatham Railroad Company as a security for the payment of iron purchased of complainants and delivered to complainants by defendants, to sell and apply the proceeds thereof to payment due on second, third and fourth deliveries of iron, *are now* and *at the time* the same *were delivered* to complainants, *unconstitutional* and *void*.

(10.) In that the Court refused to decree that the complainants have an equitable lien upon the property, rights, franchises and income of the Chatham Railroad Company, now the Raleigh and Augusta Air Line Railroad Company, for the payment of their said debt.

(11.) In that the Court refused to decree that the mortgage or deed in trust executed by the Raleigh and Augusta Air Line Railroad Company on the 7th day of April, 1877, to Charles M. Robinson *et al.*, trustees, to secure the payment of the principal and interest of what is known as guaranteed or preferred stock issued by the company, is subordinate, and subject to the debt of complainants, and that their debt against the Chatham Railroad Company is not affected thereby.

(12.) In that the Court refused to decree that the exchange by defendant company of bonds, other than the bonds issued under the ordinance of the Convention of 1868, and the act of August 15th, 1868, for the mortgage bonds of the company deposited by virtue of said acts with the Public Treasurer, was a fraud upon complainants, and that in equity the complainants have the right to hold the company responsible therefor.

(13.) In that the Court refused to decree that the defendant company is a trustee in equity to the amount of the value of the mortgaged bonds of the company received in exchange for State bonds, other than those issued under the

ordinance of the Convention of the 11th of March, 1868, and the Act of Assembly of the 15th of August, 1868, for the benefit of the holders of the bonds issued the said 11th of March and the 15th of August, and particularly for the benefit and to the use of complainants to the amount of the bonds held by them, or so much thereof as will pay off and discharge complainants' debt.

(14.) In that the Court refused to decree that the Raleigh and Augusta Air Line Railroad Company, as successors to the Chatham Railroad Company, is liable to the complainants for the amount of their said debt, for iron furnished by complainants, and received and used by the company, and that the complainants were entitled to a final judgment against said company therefor.

(15.) In that the Court refused to give the complainants a final judgment and decree against the Raleigh and Augusta Air Line Railroad Company for the sum of $93,615.62, with interest thereon at 7 *per* cent., from the 2nd day of November, A. D. 1868, with the right to enforce the collection thereof, together with the costs, out of the property, franchise, rights, goods, chattels and estate of said company, as against all prior liens thereon, and more especially as against the lien attempted to be created under the mortgage deed of July 7th, 1877.

Argument.

I.

I. (1) "*The Court erred in refusing to decree that the "contract, as set forth in Exhibits 'A' and 'B,' was "the contract of the Chatham Railroad Company.*"

This may be considered the contract of the Chatham Railroad Company in *two* aspects:

First.—By construing the two papers as one.

Second.—By construing the paper "A" as the obligation of the company through Pickrell, who acted with the

knowledge and *acquiescence* of the company, and, in fact, with its direct approval in writing, as set forth in "B," and in divers other ways.

It is a well-settled principle of law, long since enunciated by elementary writers, and sustained by a long line of illustrious and eminent judges, *that, in determining the meaning of any or all the parts of a contract, the whole of the contract must be considered, and, when there are two papers, the one referring to the other, they are to be construed together, and become one contract; and that a recital in a deed of a previous agreement is equivalent to its confirmation.*

We deem it unnecessary to make a citation of authorities to sustain this proposition.

In the first place: The Exhibits "A" and "B" have for their object the same end; they express the same consideration; they bear the same date, and are signed and delivered by the several parties thereto, with the full knowledge, consent and approval of each.

In the second place: Exhibit "B" refers specifically to Exhibit "A":

"Whereas, Messrs. Schepeler & Co., Messrs. Baltzer & "Taaks, and John F. Pickrell have entered into an agree-"ment of *even date herewith*, by which the said Schepeler "& Co. and Baltzer & Taaks agree to sell and deliver ten "thousand tons of iron rails to the said John F. Pickrell, "*a copy of which said agreement is annexed hereto*, and "which said agreement provides for the payment for said "iron by said Pickrell by the *appropriation* of certain "bonds of the State of North Carolina *in the manner set "forth in said agreement*. Now, therefore, in *considera-"tion* of the *premises set forth in said agreement*," &c.

Now, here is a *reference* in one of these papers to the other, and not merely a reference, but a *recital;* and not only a *reference* and a *recital*, but the *consideration* so far expressed is the *doing* of the *things contracted to be done* in the paper *referred* to and *recited from*. But this is not all. After referring to said paper "A," and *reciting* there-

from, as just set out, the paper *Exhibit* "*B*" goes further, and makes the *obligations* resting upon *Baltzer & Taaks*, by virtue of their connection therewith, a *special consideration* for the direct *benefit* and *advantage* of the *defendant company*, in no wise enuring to the benefit and advantage of John F. Pickrell, one of the signatory parties to Exhibit "A." It is in these words, after expressing the consideration with reference to the premises as set forth in *said agreement* (meaning agreement Exhibit "A"), it says: "*And* (in consideration) *of the undertaking of the parties* "*of the first part, therein* (*i. e.*, in 'A') *mentioned, as* "*therein expressed.*" Then it goes further, and says: "*and as hereinafter* (that is in 'B') *expressed,*" *thereby* imposing an *additional obligation* upon Baltzer & Taaks *not contained in Exhibit* "A," and *reserving* to *defendant company additional privileges* and *advantages not* set out in *Exhibit* "A," to wit:

In Exhibit "A" there is a provision authorizing the party of the second part "to sell any or all of the bonds "deposited, * * and in case of sale, the money realized "for same * * * shall be placed in the bank, and "shall *represent the bonds*, for *all* the purposes of the con- "tract." (Art. VII., Ex. "A.")

In *Exhibit* "*B*" there is a provision *enlarging* the *rights* and *privileges* of the *defendant company* with respect to the *management* and *control* of these *bonds*, and the *payment* of *money* for iron, *entirely different* from anything in *Exhibit* "A," to wit (after reference to manner of drawing bonds for payment): "*Provided, however*, that it "is hereby distinctly understood and *agreed* that whenever "any delivery of said bonds is to be made and any order "for such delivery is required, pursuant to said contract, "I (that is, the Chatham R. R. Co.) am to have the option "and *right* to *pay* in *money* the sum payable under said "contract for the iron, in respect to which such delivery of "bonds is required, at the contract price, that is to say (he "here sets out the price), * * * * * * * and upon "such *money payments* being made by *me* (*that is, by the*

"*Chatham R. R. Co.*) *I* shall have the right to *withdraw* "from deposit the *bonds* which otherwise would have been "delivered under *said contract*, and such *bonds* shall be "*delivered* to *me* (*i. e.*, the R. R. Co.) by said Continental "National Bank, on the presentation" &c., &c.

Exhibit "*B*" not only refers to and adopts as a part of it the *amount* of *iron* to be *purchased*, the *amount* of *bonds* to be *deposited* as a security for its payment, the *manner* in which the *bonds* shall be *disposed of*, the *right* to *sell* bonds and *hold money* in *their* place, as a substituted "*fund out of which to pay for the iron*," but, for the *considerations* expressed, and the *further consideration* that *Baltzer & Taaks shall not only do the things required of them in* "*A*," *but shall also allow the company the privilege and option to pay directly in money for the iron*, and *in that event* to *turn over to the company the bonds*, "*which otherwise would have been delivered under said contract*."

Again. In the event of loss at sea of a cargo of iron, &c., the parties of the first part shall not be held liable, &c., but in case of any loss *in transitu* the parties of the first part agree to refund to the party of the second part the amount paid on the same, "as soon as the *insurance* shall "be *legally due from the underwriters* who shall have *in-*"*sured* the same."

But in *Exhibit* "*B*" there is an *additional* and *more stringent obligation put upon Baltzer & Taaks*, as follows:

"It is also hereby expressly provided that in case of *loss* "of the *iron*, *or any part thereof*, on *shipboard*, between "the port of *shipment* and the *port* of *entry* or *delivery*, "*all payments* made on *account* thereof are to be *refunded* "by * * *Baltzer & Taaks as soon as such loss is ascer-*"*tained*."

Now, in the event of such loss, to whom is this money to be refunded?

To Pickrell, or, to the Railroad Company?

In "*A*" the liability of Baltzer & Taaks is *conditional*.

a. If the loss at sea or in port, of iron, is beyond their control, they are *not* liable to replace the same.

b. And in case of such loss they are not liable for the *amount paid thereon* until the same "shall be *legally due* "from *the underwriters* who shall have *insured* the "same."

In "*B*" the liability of Baltzer & Taaks becomes *absolute*, as *soon as any loss is ascertained*, for the amount paid for the iron or any part of it, regardless of the stipulations of the underwriters.

Suppose a cargo of iron should be lost at sea, between the port of shipment and entry or delivery, and there had been a payment thereon by the sale of bonds deposited for that purpose, under which one of these provisions, the *IV. article* in "*A*" or the *final paragraph in* "*B*," would their liability arise?

In the one it is provided that the liability to refund is *not* until the insurance is *due* from the underwriters. In the other, their liability to *refund* is as "*soon as the loss is ascertained*." Here is a manifest difference as to time; in one it depends upon the *contract* with the *underwriters;* in the other, it depends upon the *time* the *loss* is *ascertained*.

Here are two papers, containing *antagonistic* provisions, but *both relating* to the *same subject matter*. In order to determine their meaning they must be construed together, and it is evident from the tenor of the whole contract, as contained in *both papers*, that the *Chatham Railroad Company* was the party in whose *interest* these provisions were inserted both in "*A*" and in "*B*." 2d Parsons, pp. 501, 503, 505, 511.

"It is well settled that in the construction of all con-"tracts the *situation* of the *parties* and the *subject matter* "of *their transactions* may be taken into consideration in "determining the meaning of any particular sentence or "provision, and extraneous evidence is admissible so far

"as to ascertain the circumstances under which the writing "was made, and the *subject* matter to be regulated by "it."

Wilson *vs.* Troup, 2 Cowen, 195. Am. Dec. 14th, 462, and cases therein cited, to wit:
Sumner *vs.* Williams, 8 Mass., 214.
Fowle *vs.* Bigelow, 10 *Ibid.*, 384.
Wharton *vs.* Kaufman, 19th Johns., 104.
Also see notes in Am. Dec., 14th vol., p. 275.

The law does not deny to the *reader* the same light and information that the *writer* enjoyed; he may acquaint himself with the persons and circumstances that are the subject of the allusions and statements in the writing, and is entitled to place himself in the same position as the party who made the contract, to view the circumstances as he viewed them, and so to judge of the meaning of the words and the correct *application* of the *language* to the things (or persons) described.

Shaw vs. *Wilson*, 9 *Cl.* & *Finn*, 555, 569.
Macdonald *vs.* Longbottom, 1 El. & Bla., 987.
Mumford *vs.* Getting, 7 C. B. (N. S.), 305.
And other cases cited in *I. Wait's Actions & Defenses, p.* 118.

Where the language by the parties to a contract is indefinite and ambiguous, and hence of doubtful construction, the *practical interpretation* by the *parties* themselves is entitled to *great*, if not *controlling*, influence.

Chicago *vs.* Seldon, 9 Wall., 50.

A party who takes an agreement prepared by another, and upon its faith incurs obligations or parts with property, should have a construction given to the instrument favorable to himself.

Noonan vs. *Bradley*, 9 *Wall.*, 394.

In our case, according to the evidence, *Exhibit* "*A*" was modified, corrected and materially changed by Hawkins when submitted to him, and *Exhibit* "*B*" was entirely

prepared by him or his agents. He revised, corrected, inspired and shaped the terms and conditions of this contract absolutely.

If mutual contracts are not fully and definitely expressed, the law requires that such a construction shall be put upon them as will secure *equal* and *exact justice*.

White *vs.* Polk, 36 Texas, 502.
I. Wait's A. and D., p. 118.

In giving construction to a particular clause in an agreement it is proper to consider the *situation* and *relation* of the *parties* and the *subject matter of the contract*, and *all* the other provisions of the agreement.

Wait's Actions and Defenses, Vol. I, p. 126, § 17, and cases there cited.

This contract being made up of *two* instruments, *A.* & *B.*, *both* relating to the same subject matter and having for their object the same purpose, to wit, the sale and purchase of and payment for *ten* thousand tons of iron to be used in the construction of the *Chatham Railroad*, they are to be construed *together* as forming parts of *one contract*, and the rule is the same whether they were executed on the *same day* or at *different* times; and not only will the entire contract be considered in ascertaining the *object* of it and the *intention* of the *parties*, but *one clause in the contract* may be considered for the *interpretation* of *another* (or of the whole of the contract).

Wait's A. & D., Vol. 7, p. 123, and cases cited.

If this is a correct rule and there should be any question whatever as to the construction of this contract and the liability of the parties to it, the final paragraph of "B" would be a key to the whole matter. If this is not true, then what right had the defendant company to stipulate for the benefit (?) of Pickrell? What was the situation of the parties? Hawkins, as President of the Chatham R.R. Co., had in his possession a large amount of bonds issued by the State and *dedicated* by law to the construction of

the Chatham R.R. He desired to so dispose of these bonds as to effect that purpose.

(*This is an amiable view of it.*)

He called to his aid John F. Pickrell, who was a friend, and who undertook to aid him in this behalf. Pickrell was to assume no responsibility and was not to be affected by any losses. The company needed a large quantity of iron—ten thousand tons. How to get this iron was the question! Pickrell could not furnish it, Schepeler & Co. could not furnish it, but with Baltzer & Taaks' aid the iron could be gotten.

Pickrell knew the bonds belonged to the Railroad Company. Hawkins knew that fact, and so did Baltzer & Taaks. Pickrell had no interest in the bonds. Hawkins had no interest in the bonds; but they belonged to the Railroad Company.

In order to *get* the iron it was necessary to hypothecate these bonds. In order to *pay* for the iron it would be necessary to *sell* these bonds.

Whitford writes to Pickrell, "*There will not be a particle of risk.*"

On the 10*th* of Sept., 1868, in a communication to Baltzer & Taaks, Pickrell signs himself "*for Chatham Railroad Co.*"

Both Whitford and Pickrell are represented to Baltzer as the *agents* of the *Chatham Railroad Company. Hawkins* is known to be its *President.*

Such is the *situation* of the parties. The subject matter of the contract is the purchase of iron and the mode of payment.

Such being the situation of the parties, and such being the subject matter of the contract, it is not difficult to say to whom was to be refunded money or bonds under the provisions of "*A*" and "*B.*" The conclusion cannot be escaped that it was *the Chatham Railroad Company.*

The following testimony is referred to to show the situation of the parties, that is, their relations to each other and

to B. & T., and likewise the subject-matter of their transactions.

The complainant *Hermann R. Baltzer* was examined as a witness in his own behalf. His testimony, applicable to the question under discussion, is as follows, to wit:

In answer to the question if Pickrell had "acted for the Chatham Railroad in any other respect" previous to the 11th September, 1868, the date of the contract, *he answered*, A. "*He borrowed money for the Chatham Railroad Company.*"

Record, p. 179, Q. 146 and Ans.

In answer to Cross-Q. No. 74, on page 167 of the Record, Baltzer says:

A. "The contract marked 'A' was a contract between "Schepeler & Co. and Baltzer & Taaks on one side, and "*the Chatham Railroad Company* on the other, the name "of *John F. Pickrell* having been used with the *concur-* "*rence* of *all parties* as a matter of form for the more con- "venient executionof the contract." * * * *

Record, p. 167.

To *the same effect* is the testimony of *John F. Pickrell*, a witness examined in behalf of complainants. In answer to Q. 68, page 71 of Record, he says:

A. "I had no profit in the iron; I simply acted as an "*intermediary* between the company and these parties "selling the iron; *I incurred no responsibility; all the par-* "*ties so understood.*"

Record, p. 71, Ans. to Q. 68.

In answer to Q. 76, page 72 of the Record, as to "why the name of Hawkins is substituted" in the third (3) *clause of contract*, &c., the *same* witness says:

A. "He was the person I represented; he was the person "to receive the iron; *I was merely receiving for him.*"

Record, p. 72, Ans. to Q. 76.

In answer to Q. 78, page 73:

Q. 78. "Were or were not you individually to bear or

"sustain any loss in any event, as between yourself and "said company?"

A. "*I was to stand* NO LOSS WHATEVER."

On page 74, in answer to Q. 84, he states, in substance, that in the event the bonds failed to constitute a fund, the iron was to be paid for by the *company*, in *money or otherwise.*

Record, p. 74, Q. and A. 84.

In answer to Q. 177, page 90 of the Record, as to who was interested with him, &c., Pickrell says, among other things, that there was to be a division of profits, &c., between *him* and *Whitford;* that *Whitford* was to receive two-thirds ($\frac{2}{3}$) and *he* was to receive one-third ($\frac{1}{3}$); and on page 142, in answer to question 201, he says:

A. "*Col. Whitford repeatedly told me that other persons were interested, but never gave me their names.*"

Record, p. 124, Ans. to Q. 201.

On page 70 the witness *Pickrell* says:

A. "To the best of my knowledge and belief I introduced "Col. Whitford to them" (meaning B. and T.) as the "agent of the company, and *I know he acted in that "capacity in making this contract.*"

Record, p. 70, Ans. to Q. 62.

Baltzer says, p. 156, in answer to Q. 11, that when *Hawkins* was introduced to him by *Pickrell* and *Whitford*, that *he*, *Hawkins*, confirmed to them that *John D. Whitford* was *their*—the *company's—agent.*

Record, p. 156, Ans. to Q. 11.

That *Hawkins* likewise expressed himself pleased that they, B. & T., intended to take an interest in the introduction of the bonds in foreign markets, &c.

Ibid.

Before leaving, "*Mr. Hawkins told me that I need not "be under any apprehension, as he left Mr.* WHITFORD "*in New York, who would see to everything.*"

Record, p. 167, Ans. to Q. 13.

Baltzer further says, p. 155 of the Record, that the paper shown him "was the draft of the intended contract, and "was the result of the interview had between us and *John* "*D. Whitford* and *John F. Pickrell*, in the presence and "in the office of our lawyer, * * and this paper * * "*Whitford* and * * *Pickrell took with them, declaring* "*they had to send it to Mr. William J. Hawkins, Presi-* "*dent of the Chatham Railroad Company.*"

Record, p. 155, Ans. to Q. 5.

This *paper*, says Baltzer, "was returned to us *variously* "*modified;* as, for instance, the name of *John D. Whit-* "*ford* being dropped and the name of *William J. Haw-* "*kins* being inserted."

Record, p. 155, Ans. to Q. 6.

Pickrell sustains Baltzer. He says, in answer to Q. 55, p. 69, speaking of the draft of contract mentioned by Baltzer as having been taken by W. & P. to send to Hawkins:

A. "It was submitted to the *Chatham Railroad, and vari-* *ous alterations* were *made* at the *instance of Dr. Hawkins* and Col. Whitford."

* * * * * * * * * *

Q. "56."

A. "Some are made in my handwriting; others are not "in my handwriting, but *all* the *alterations* and *amend-* "*ments* made to this *paper* were *made* at the *instance of* "*Dr. Hawkins*, to the best of my knowledge and belief "and recollection."

Record, p. 69, Ans. to Q. 56.

Baltzer says, on page 55, in speaking of Exhibit "B":

A. "*There was such an agreement executed at the* "*desire of William J. Hawkins, President of the Chatham* "*Railroad Company, and signed by him, which was part* "*of the other agreement,*" &c. * * * *

Record, p. 155, Ans. to Q. 7.

Again. "And this iron they expected would be paid for "out of the proceeds of North Carolina State bonds, which

" the State was to issue in exchange for the first mortgage " bonds of the railway."

Conversation between Baltzer and Whitford and Pickrell.

Record, p. 154, Ans. to Q. 3.

" They said they were acting for the Chatham Railroad " Company, John D. Whitford especially designated as the " agent of the Company, and John F. Pickrell was to attend " to the business." * * * * * * *

Record, p. 154, Ans. to Q. 4.

And John F. Pickrell in his testimony, Record, page 69, says, speaking of his representations to B. & T.:

A. "* * *; *but I expressly stated that the Chatham Railroad was to provide means to pay for the iron.*"

Record, p. 69, Ans. to Q. 58.

" The whole tenor of our conversation in reference to this " iron contract with Mr. Baltzer, with whom I had the " most conversation, *was that the company were [was] to* " *pay for the iron, as they [it] did agree to afterwards.*"

Record, p. 69, Ans. to Q. 57.

Hawkins had authority to negotiate these bonds, and to do it directly *himself*, or through his *agents* and *representatives*.

After authorizing the said Hawkins to prepare and deliver to the Public Treasurer of the State the mortgage and bonds required under the Act of the 15th of August, 1868, he is likewise authorized to "*receive from the said Treas-* " *urer of the State two millions of bonds, of the State of* " *North Carolina, and negotiate the sale of a part or the* " *whole amount of said bonds, to the best interests of the* " *company.*"

Copy of Minutes of the Board of Directors of the Chatham Railroad Company, *Sept.* 4, 1868.

Record, p. 271, Exhibit C. H. K. T., No. 1.

In the ordinance of the Convention of the 11th March,

1868, the bonds are authorized to be issued, "*To enable the* "*Chatham Railroad Company to finish its road.*"

Ordinances of Con., 1868, p. 62, ch. 19.

"*To enable the Chatham Railroad Company to finish* "*its road.*"

Private Laws, 1868, ch. 14, p. 15.

Again.

Contemporaneous legislation respecting the *subject matter* of this *contract*, may be referred to, as well as the *conduct* of the *parties* leading up to the contract.

(1.) On the 11th day of March, 1868, the ordinance of the Convention is ratified, by which the Chatham Railroad Company becomes entitled to $1,200,000 dollars of State bonds, &c.

Prior to that time *Whitford* had made the acquaintance of *Jno. F. Pickrell*, and had had business transactions with him.

Pickrell's testimony, Record, pp. 60, 61, Ans. to Q. 3, 13, 14.

The Convention bonds were issued the 1*st day of April*, 1868.

Record, p. 230, Hawkins' testimony before Com., Exhibit V. No. 4, &c.

On the 13*th day of May*, 1868, *Whitford* writes from Newberne, N. C., to Pickrell, New York, respecting these bonds: "A matter in which there is much money."

"*It is a railroad contract.*" "If you can aid *us* in the "start with money, as you proposed to do in the Wilming- "ton, Charlotte and R. Road, *we* can make for *you* some- "thing worth having."

"There will not be a particle of risk, as *we* will have all "in *our* own hands. What I wish you to do is to see some "of your *moneyed* friends as soon as convenient," &c. "* * * * *Parties here of the highest standing will be*

"*interested with* US, *and may call on you with* ME, *when* "*I reach your city, which I expect to do next week.*"

Exhibit P. No. 1, Record, pp. 94–95.

July 6th, 1868, *Whitford* had an acceptance (?) from Charles Gould. This was procured, as Pickrell says, to enable Whitford to prove to the Company his ability to raise money, &c. It was never heard of afterwards, and is a palpable fraud.

Exhibit V. V. No. 1, Record, p. 152.

On the 20th day of August, 1868, the convention bonds are delivered to Hawkins.

Hawkins' testimony before Investigating Committee. Exhibit V, No. 4, Record, p. 230.

And on the very next day, *the 21st day of August*, 1868, Whitford, being in Raleigh, writes another letter to Pickrell in New York, in which he says:

"*I* have concluded to visit *you* next week with *one of* "*the parties authorized* to *close contract*, &c.

"Passing events or coming events require *us* to act hast-"ily. * *

"OUR *bills have all passed the Legislature.* * * *

"*We* shall have a *large number* of *bonds* to *sell*, and "about *ten thousand* tons of *iron* to *buy at once.*"

Exhibit P. No. 2, Record, p. 95.

On the *31st of August*, 1868, Pickrell negotiates with B. & T. a loan for Hawkins, for R. R. Co., of $100,000.00, which, according to Hawkins' statement before the Committee of Investigation, was paid back in December, 1868.

Take into consideration the further fact, that according to the provisions of Article *III., Ex.* "*A*," that in the death of Pickrell, Hawkins was to represent him; that, according to Art. *V., Ex.* "*A*," the "warehouse receipts or ship delivery order and bills of lading" were to be presented to Pickrell, *or* to *Hawkins*, at the *former's office* in the City of New York; and the further fact, that, when the bonds are deposited in the Continental Bank, October 30th,

1868, Hawkins reserves the right *to cut off the coupons* as they shall fall due, "*without the joint order of the other parties*," &c.,

(Record, p. 189. Ex. B. & T., No 19)

and the conclusion is irresistible that this contract was made *by* and *for* the *benefit* of the *Chatham Railroad Company!*

That "*A*" and "*B*" are so closely identified with each other, so intertwined and interlocked, so married together, as it were, by the necessity of the case, that, unless the Chatham Railroad Company is not the responsible party, and not intended to be bound thereby, it were useless to have made this contract at all.

In some respects the contract is inartistically drawn; not as plain as it might have been, but sufficiently so, when subjected to the test of legal construction, to fix the responsibility arising thereon where it rightfully belongs.

Lord Holt says the notion that the law makes a contract is a metaphysical notion; that the law does not make the contract; it simply enforces the contract made by the parties thereto.

If it was the *intention* of the parties to this contract that the Chatham Railroad Company should not only receive the iron purchased, but provide for its payment to the parties selling the same, it is the duty of the Court to require the company to do it. It should not be allowed to practice upon honest men the abominable fraud of repudiating its own contract and denying liability thereon.

In the face of the overwhelming evidence produced by the complainants in support of the allegations contained in the bill, the defendants have utterly failed to meet the same. By two uninformed and irresponsible ex-directors of its company, it feebly attempts to meet the case of complainants; and, the two *agents, Hawkins and Whitford*, who negotiated this contract, who were the prime movers in it, who are supposed to know all about it, the principals, as it were, in the transaction, and one of whom was a beneficiary under it, avail themselves of the privilege of silence.

They are as dumb as the dead, as silent as the grave, and content themselves after many denials in their answers, by pleading the *Statute of Limitations*.

The general rule of law is, that an ambiguity which arises upon the *application* of an instrument may be removed by means of *parol* evidence.

2nd Stark. Ev., 2nd Ed., 546.
Phillips Ev., 8th Ed., 710, 717.
Chitty on Contracts, 5th Am Ed., p. 104.

"When the terms of a written instrument are clear, and "oral evidence is used to point the *application* to this or "or that *subject matter*, the *oral evidence does not usurp* "*the authority of the written instrument; it is the instru-* "*ment which operates;* the oral evidence does no more than "assist its operation, by *pointing out* and *connecting it with* "the proper subject matter; it acts in *aid* and *assistance* of "the *written instrument*, and performs that duty which, "on every *application* of a written instrument, must be "accomplished by means of *extrinsic evidence*, that is, it "*points out* the precise object to which the instrument is "applicable."

Chitty, 8th Am Ed., p. 104.

To explain a latent ambiguity, PAROL *evidence may be adduced, and parol evidence may be admitted on behalf of one of the contracting parties, to show that the other party,* APPARENTLY *a principal in the agreement, was in fact only an* AGENT *so as to fix the real principal.*

Ibid., p. 165.

And, *secondly*, although Pickrell's name is fully and conspicuously used in *Exhibit* "*A*," it nowhere appears in *Exhibit* "*B*" except by reference in the preamble and except by operation of law; and, by this means, "*A*" and "*B*" are merged and melted into one, and the only *just* conclusion which can be arrived at, in the face of the papers themselves, and in the light of the testimony affecting the relations existing between *Pickrell* and Hawkins and Whitford, and Baltzer & Taaks, is, that in the pur-

chase of this iron, and the manner of payment, *Pickrell* was acting for and in behalf of the *Chatham Railroad Company*, with its full knowledge and approval of every step taken by him in the matter. His contract was supervised, modified, amended, altered and ratified by the defendant company before it was signed, and to remove all doubt as to its participation in, and connection with it, it is solemnly incorporated under the signature of its president, ratified and approved, and again amended and added to in Exhibit "B."

Hawkins' power to dispose of the bonds for iron, necessarily implying the power to make a contract binding upon the company, is neither questioned nor denied. He may do it himself *personally*, or through "bankers and brokers" in New York, or *agents* whom he may employ for that purpose in North Carolina or elsewhere, and the ratification of their actions and deeds by Hawkins binds the company, although they may not have been directed by him in the beginning. And *Hawkins* (*i.e.*, the company) cannot ratify a part and repudiate a part of the transaction.

If Pickrell exceeded his authority intrusted to him by Hawkins, in negotiating the sale of bonds and contracting for the purchase of iron, the defendant company must either wholly ratify or wholly repudiate the transaction. It cannot ratify that portion of the contract which is beneficial to it, and repudiate the remainder.

Rudsill *vs.* Falls, 92 N. C. R., p. 222.

An agreement made by an *agent* of a corporation is the *contract of the corporation*, although made without any resolution of the Directors, and though the *seal used* (if any) *was the private seal of the agent*, if the agent was authorized to execute it, or (after execution) the company ratified his act.

Eureka * * Co. *vs.* Baily * Co., 11th Wall., 488.

If the defendant company justified the belief of Baltzer & Taaks that Pickrell and Whitford, either or both of them, were authorized to negotiate this contract, it is estopped to

deny their authority or repudiate their representations, and whatever either or both of them said or did in reference to the contract at the time is considered as done by defendant company, and is subject to parol proof, and this doctrine applies to *future* representations and acts until their authority is revoked or a disclaimer is brought home to Baltzer & Taaks. This not only applies to Whitford and Pickrell, but likewise applies to Hawkins, and the company is bound by their acts, severally or jointly, with respect to the negotiation of these bonds, and contract incident thereto.

Townsend, Exr., *vs.* Chappelle *et al.*, 12 Wall., 681.

Corporations may be bound by the acts of its agents, although not under its corporate seal.

Am. Ins. Co. *vs.* Oakley, 9 Paige, 496.

No company can be allowed to hold out another as its agent and then disavow responsibility for his acts.

Lo. Life Ins. Co. *vs.* McCain, 6 Otto, 84.

Assent of corporations to acts done on its account, may be inferred in the same manner that the assent of a natural person may be.

Bank of Alabama *vs.* Comegys, 46 Am. Dec., 278.

It cannot take the iron and refuse to pay for it. It should not be allowed to rob a man in broad daylight, in the presence of a Court of Justice. Did the defendant company consider itself bound by said contracts? What was the conduct of the company towards Baltzer & Taaks up to and until 1871, and, indeed, until after the company had *repudiated* its own name and took upon itself the name it now bears? What means did it use to quiet Baltzer & Taaks in their desire to have the matter settled, and after it was notified by Baltzer & Taaks that they demanded the money for these worthless bonds?

Did it then *repudiate* the contract? Did it then *refuse* payment under it? Not one whisper is heard about refusing

payment and an honest settlement, until Baltzer & Taaks instituted a suit against the company on the common law side of the docket at Greensboro' about December, 1872, and in its answer to plaintiffs' complaint in that suit, about the 19th of February, 1874, the said "company falsely and "fraudulently denied its obligations to pay * * for said "iron," and denied that "either *Hawkins*, *Whitford* or "*Pickrell had authority* to *bind* the *defendant in the* "*making* of *said contract*, and that it was in no manner "bound by or was a party to Exhibit 'A'."

And in the answer of *William J. Hawkins* to complainants' bill, *page 50 of the Record*, he says, and swears to it, that "*from his best recollection he had no knowledge of* "*the said contract between complainants* * * *and* "*Pickrell until after the terms thereon were agreed on*, "*and he thinks it was signed by the parties before it was* "*seen by him*."

If the Court will take the trouble to compare this statement with *Articles III.* and *V.* of *Exhibit* "*A*," it will doubtless be at a loss to understand (if Hawkins' statement is true), how it is, that any respectable man, in his senses, would have taken the liberty of using not only Hawkins' name, but his bonds, as freely as Pickrell had used Hawkins' in this contract. The testimony *all* shows that the paper was not signed until after it had been amended at Hawkins' suggestion and dictation; that as signed it was a different paper from the one originally prepared. That it was not signed until the 24th of September is conclusively shown by Baltzer's testimony (p. 163, Record), and Hawkins' allegations to the contrary are not supported by proof.

But to *return*:

What reasons did the company give and what reasons did B. & T. have for *still believing* the *defendant company would pay for the iron* prior to the said suit in 1872?

On the 18th day of December, 1868, the General Assembly of N. C. (the bill having passed the day before, to wit,

the 17th) *ratified* the bill hereinbefore referred to as the *Bill of December 18th*, 1868, whereby the company was to receive $2,000,000 bonds, with tax levy incorporated—by returning the $2,000,000 received of the issue of August 15th, 1868, &c., &c.

Now, on the day when the bill passed the Assembly, to wit, December 17th, 1868, Hawkins telegraphed to Whitford and Pickrell, who were in New York, and in direct communication with B. & T., as follows:

"RALEIGH, N. C., December 17, 1868.
"*To Col.* JNO. D. WHITFORD, or JOHN F. PICKRELL,
"60 Wall Street.

"Our bill passed to-day. Both houses. All right. * * "Now and exactly as copy sent you yesterday. *Now our* "*bonds* will go. The January interest will be paid."
(Signed) "W. J. HAWKINS."

Very soon after this, the issue and exchange of bonds under this act is stopped by injunction, and in January, '69, the injunction is made perpetual by the Supreme Court.

On *January the 8th*, 1869, while the "bond matter" was being argued in the Supreme Court at Raleigh, Whitford, writing from that city to Pickrell in New York, referring to the fact that Hawkins is constantly communicating with him—P.—"by telegraph, *of course*," and after writing considerably, goes on to say:

"*Tell Baltzer to be of good cheer.*" "*All's well that ends* "*well, and I think we will in the end triumph over open* "*and secret foes.*"

Record, p. 107, p. 108.

This was after Whitford had, as *agent* in December, 1868, received from Pickrell, *agent*, upwards of $400,000 of the company's funds.

The injunction case having been decided against the defendant company, *Hawkins*, who was in Raleigh, telegraphed to his *then* recognized *agent*, Whitford, in part, as follows:

"RALEIGH * 24th February (?), 1869.

"*Col.* JOHN D. WHITFORD:

"The *injunction* has really gone against *us*. We will "now endeavor to fight it out in other line. *Say to our* "*friends now they must stand up to us.*" * * * *

"Would it not, *after seeing them*, be best for *you* to pay "a visit to N. C.?"

"See my letters."

(Signed) "W. J. HAWKINS."

Who were "our friends" referred to? Who had been "standing up" to them before?

And on *March the 18th*, 1869, *nine* days later, this same *Whitford*, AGENT, telegraphed from Raleigh to Pickrell as follows:

"RALEIGH, N. C., Mch. 1869.

"*To* JOHN F. PICKRELL:

"B. *returned this morning. Tell Baltzer keep quiet* "*for a day or two. Matters progressing favorably.*

(Signed) "JOHN D. WHITFORD."

Record, p. 107, Ex. P. 13.

See *Pickrell's* testimony, page 79 Record—

Q. 125. "*To whom* * * * *does the letter 'B.' refer.* * *?

A. "*To Dr. Hawkins, the President of the Chatham* "*Railroad Company.*"

Q. 126. * * * * * *?*

A. "*It was arranged between Col. Whitford and my-* "*self, that in our correspondence, all reference to Dr.* "*Hawkins should be made by using the letter "B.*"

Why "B."? Why not "H."? Why this mystery? this concealment? It is an ear-mark of *fraud*. A *pointer*, as it were.

On *March the 20th*, 1869, Whitford writes from Raleigh to Pickrell in New York, and, among other things, says:

"B. (*i. e.*, *Hawkins*) and myself, is anxious, very "anxious, to close up the iron matter to the satisfaction of "the importers. Tell Mr. Baltzer the iron will be taken in "Norfolk and paid for," &c. * * * *

Record, p. 111.

In the argument below, the counsel for defendant company took the position that this letter referred to a cargo of iron brought over on the *Anna McCann*, which was sold to and paid for by the Raleigh and Gaston R.R. Co., and though *intended* to go on the Pickrell account, was, by *complainants'* consent, otherwise disposed of.

See deft.'s argument, marked M. & F., page 28, bottom of page.

It is conceded there had been some talk between the parties about this cargo of iron, and, to whom, and when it should be paid for, and by whom and how it was to be applied, and complainants' counsel contend, that when it did not "go on the Pickrell account," and was "otherwise disposed of by *complainants' consent*," it was so done upon a *conditional consent*, thereby putting the company under further and stronger obligations to pay complainants for the iron received under contract Exhibits A and B! And to satisfy the Court of this, reference is made to Baltzer's letter of the 21st of April, 1869, to John F. Pickrell, as follows:

"NEW YORK, April 21, 1869.

"J. F. PICKRELL, Esq., New York:

"DEAR SIR—Considering the difficulties you are laboring "under since the late decision of the Supreme Court of the "State of North Carolina, we will make *no further demand* "*or call on you for receiving iron under contract dated* "11*th Sept.*, 1868, until *you* and *your friends* have *succeeded* in *making the bonds of North Carolina*, now *on* "*deposit in the Continental Bank as collateral security* "*for said contract, marketable in this city, or until such* "*time as the First Mortgage Bonds of the Chatham* "*R.R. Co., recently authorized by the Legislature of* "*North Carolina, shall have been issued and negotiated* "*to a sufficient extent*, always *provided* you do *now* "*promptly pay for the iron ex Annie M. Cann*, about 800 "tons, now in Portsmouth, sold you at $73.25 low cash "and expenses with interest, against our delivery order on

"our agents in Norfolk, and that should we make any "further sales of iron, as authorized by your letter dated "2d March, '69, we shall reduce quantity of iron contracted "for to the extent of such sales."

"Yours, very truly,
(Signed) "BALTZER & TAAKS."

Record, page 102, Exhibit B. & T. No. 28.

And this explains not only why the Whitford letter referred to the *McCann* cargo, but it further explains why the letter was written by B. & T. to Pickrell the *26th of August*, 1869, delivering up the 850 bonds in the Continental Bank to Hawkins, and the closing of the contract, as to future deliveries of iron.

"*These bonds being released pursuant to the contract having been mutually declared closed.*"

Record, p. 193, Ex. B. & T. No. 33.

On *April the 15th*, 1871, in a letter from *Whitford* to *Pickrell*, Whitford again says:

"In reply to your letter of the 11th inst., received on "yesterday, I have to say, that I have quite recently had "several interviews with *Dr. Hawkins* in reference to * * "Baltzer & Taaks matters, and on his return to this place "will lay your proposition before him, and endeavor to "get him to act without delay."

Record, page 115, Ex. P. No. 27.

On *May the 8th*, 1871, a few days later, Whitford again wrote to Pickrell, and said:

"As to Baltzer's matter, notwithstanding he loses no "opportunity to abuse me, I lose none, nor have I, in *try-* "*ing to get Dr. Hawkins up to a fair* SETTLEMENT *with* "*him*, and hope, ere long, to be able to make him, Baltzer, "a proposition he may accept, or at least not reject "hastily," &c. * *

Record, p. 114, Ex. P. No. 26.

Whitford is still *agent* during all this correspondence.

The very next day, to wit, the *9th day of May*, 1871, *Hawkins*, in a letter to Baltzer & Taaks, in speaking of hoping to get his (B.'s) house to negotiate a loan for five thousand tons of iron (thus holding out new inducements for delay on B.'s part, and to keep him "*quiet*"), says:

"*At that time we desire to make an arrangement with you in regard to other matters satisfactory to all parties.*"

Record, pp. 185-6, Ex. B. & T. No. 2.

Does not this refer to *Contract "A and B"*? Who are the "*parties*" referred to? What are the "*other matters*" referred to? What dissatisfaction exists that an arrangement is necessary to make matters "*satisfactory*"? Dr. Hawkins might have come on the stand and explained this, if it does not refer to the contract of the *11th September*, 1868; but *he does not!* but "*events*," both those which may be termed, in the language of Whitford, "*coming* and *passing*," clearly point to Contract *A and B* as the subject-matter, Whitford, Pickrell, Hawkins, and Baltzer & Taaks, the *parties* thereto, as the *matters* and *parties* referred to by Dr. Hawkins in this letter to Baltzer & Taaks.

On *May 25th*, 1871, "Whitford, *agent*," telegraphed to Pickrell:

"Will hear from me respecting iron matters in due time."

Record, p. 111, Ex. P. No. 21.

And on *June the 8th*, 1871, Hawkins, in a letter to Baltzer & Taaks, says:

"Hope to get matters in shape in time to meet you before "your departure for Europe.

"We will not be able to do much before the meeting of "the Legislature in November next."

Record, p. 186, Exhibit B. & T. No. 3.

In all this correspondence between Pickrell, Whitford, Hawkins and Baltzer & Taaks, there is not even the suggestion of the repudiation either of the agency of

Whitford or Pickrell or Hawkins, or of either or all of them, with respect to this contract by the defendant company, or by any one acting for it, and not, as before stated, until the defendant company, in 1874, filed its answer to complainant's suit brought in 1872, was there even an intimation made to B. & T. by any one that the defendant company did not consider itself bound under the Contract A and B, but held out inducements and made suggestions to the contrary, notwithstanding a demand had been made upon it by B. & T. for the money.

Not until long after the "*Dr.*" had made his showing before the Investigating Committee—which Whitford said "*will agreeably surprise his friends and confuse his enemies*"—and after the Raleigh and Gaston Railroad Company had subscribed for $1,000,000.00 of preferred and guaranteed 8 per cent. stock under the Act of the *13th of December*, 1871, authorizing the Chatham Railroad Company to change its name to the "Raleigh and Augusta Air Line Railroad Company," are the complainants given to understand that they have been *paid in full*, and that the defendant company owes them *nothing*.

Corporations are as strongly bound as individuals are to a careful adherence to truth in their dealings with mankind, and they cannot by their representations or silence involve others in onerous engagements and then defeat the calculations and claims which their own conduct had superinduced.

Moran *vs.* Board of Comrs., 2d Black, 722.

And, "*In a Court of conscience*," as has been said by Mr. Chief Justice Waite in Casley *vs.* Buchanan, 23d Wall., 420, "*deliberate concealment is equivalent to deliberate falsehood.*"

II.

I. (2.) "*The Court refused to decree that under the said "contract the Chatham Railroad Company was bound "to deposit for the purpose of providing for the payment*

"*of said iron and as a* SECURITY *for the performance of* "*said contract, good and valid bonds of the State of North* "*Carolina, in amount equal to the whole purchase money* "*for the said ten thousand tons of iron, and fifteen per* "*cent. in addition thereto, and to keep good until the full* "*performance of the said contract the said deposit.*"

First.—"The party of the second part is to deposit " * * * * * * such an amount of the bonds of the "State of North Carolina as will at the market price on "the *day* of *deposit* be *equal* to the *whole purchase money* "for the said *ten thousand tons* of *iron*, and *fifteen per* "*cent. in addition thereto*, which margin * * is to be "*kept good until* the *full performance* of this contract."

(*Exhibit* "*A*," Article III.)

In *Exhibit* "*B*" the *Exhibit* "*A*" is recited and referred to by Hawkins, which is equivalent to a confirmation, and he agrees to deposit the bonds provided for "*for* "*the purpose of providing for the payment of said iron*, "*and as a security for the performance of said contract* "*therein stated.*"

(*See Exhibit* "*B.*")

Now, if on the *day* of the *deposit*, the market price of the bonds was not "equal to the whole purchase money for "the said ten thousand tons of iron and *fifteen per cent.* in "addition thereto," then this contract has been violated. Admit, for the sake of the argument, that when these bonds were deposited the market value "was equal to the whole purchase money" and *fifteen per cent. in addition thereto*, then it is submitted, if the same was not "*kept good*," that is, if the market price of the bonds so deposited were *not kept equal in value* to the whole of the purchase money which might be due for undelivered iron, and fifteen per cent. in addition thereto, and until the full performance of said contract, there was a *breach* of *this contract*, and the *defendant company* would be liable.

No one will pretend that in *Nov.*, 1868, these bonds had any such market value. They were unsalable, according

to defendant's own answer in December, and it was "improper to sell them." Their value had been "questioned." And it is an undisputed and indisputable fact, that the bonds deposited by the defendant company did not meet the requirements of the contract. They were not "*kept good* "*until the performance of said contract.*"

III.

I. (3.) "*The Court refused to decree that the Chatham* "*Railroad Company failed to perform that part of the* "*contract.*"

That is, the Court refused to say and decree that under the contract the Chatham Railroad Company failed to put up bonds of the value contemplated and agreed to in the contract, and especially the "A" part of it.

Defendant company contends it was only liable to deposit the particular bonds mentioned in "B," and that, doing this, it performed its contract, and all further liability under said contract on the part of the company ceased and determined when the company deposited said bonds.

If this position should be correct, then the complainants have no case against defendant company. But suppose the defendant company's position, that all it had to do was to deposit bonds of a certain description, is correct, and that embraces all its liability under said contract, yet it cannot be denied that the bonds so deposited, whether of one number or another, must not only have a value, but a value—*the particular value called for in the contract*, and the value called for and contemplated in the contract is the *value described and set out in Art. III., Ex.* "A." The company does not pretend that the market value of the bonds was kept up to any such standard, or in fact to any standard, because the bonds had been "questioned," and it was deemed "improper to sell them."

IV.

I. (4.) *In that the Court refused to decree that the bonds to be deposited under the said contract were to be deposited*

simply as a fund out of which to pay for said iron, and not as a payment.

*Exhibit "A," Article VI., says "the * * bonds are deposited as a fund out of which to pay for said iron,"* * * * * * * * * "the parties of the first part do not look solely to the said "bonds for payment, * * and * * should (the said bonds) "at any time fail to constitute a fund for payment, the "parties are nevertheless to be paid for iron at the same "rates and times as hereinbefore provided."

Record, p. 21.

The bonds are deposited as Hawkins says—

"*For the purpose of providing for the payment of said "iron, and as security for the performance of said con-"tract as therein provided.*"

The proof outside of the contract is, that the bonds were deposited simply as a fund to raise money, and no one ever pretended that they were to be considered in any other way, until after this suit, when Hawkins claims that B. & T. were *paid* with the bonds when they received them for negotiation, and made a premature credit for them of their market value as of that day.

Baltzer and Pickrell both swear *they were not a payment and were not so intended.*

V.

I. (5.) "*The Court refused to decree that the only in-"terests complainants had in said bonds when deposited "was a contract* LIEN *thereon, 'for the faithful perform-"ance of the contract,' and that when said bonds failed to "constitute a fund 'out of which payment could be real-"ized,' the Chatham Railroad Company became liable to "the complainants in money for the contract price of the "iron.*'

"It is understood that the said bonds are deposited as a "fund out of which to pay for said iron" (Ex. "A," Art. VI.), "for the purpose of providing for the payment of said "iron, and as *security* for the performance of said con-

"tract" (Exhibit "B"), "and * * * the parties of "the first part are to have a *lien* on the same," &c. * *
(*Ex.* "*A*," *Art. VI.*, Record, p. 21.)

II.—The parties of the second part reserve the right to sell any or all of the bonds deposited * * * and in case of sale the money realized * * * or a sufficient amount thereof, to cover the price of all said iron, and fifteen per cent. in addition thereto, *shall be placed in the bank on the same terms, and represent the said bonds for all the purposes of this contract.*"
(*Exhibit* "*A*," *Art. VII.*)

"The parties of the first part shall have their election to "draw in payment for iron, bonds, or *money*, the proceeds "of bonds, if any shall have been substituted in place of "bonds sold."
(Exhibit "A," Art. VII., *2d clause.*)

"It is also understood that the parties of the first part do "not look solely to said bonds for payment," &c. * * *
(*Exhibit* "*A*," *Art. VI.*)

III.—It is conceded in the pleadings that a large amount of bonds issued under the *ordinance* of the Convention of March 11, 1868, and under the *Act* of August 15, 1868, were sold by Pickrell as agent of the company, and that in December, 1868, about $386,000 of such proceeds were turned over to *Whitford, agent, by Pickrell, agent.*

These bonds were issued by the law-making power of the State for the purpose of aiding in the construction of the Chatham road. Baltzer & Taaks had been informed of these issues, and given to understand that these bonds were for that purpose. The complainants contend that the fund in the possession of Pickrell, being realized from bonds of the company, as aforesaid, before the other bonds were discredited, that, under the contract the defendant company became liable to pay in money, (the bonds on deposit failing to constitute a fund, &c.), and that the company had no right to withhold the proceeds of similar bonds from the demand of the complainants for the payment of said debt.

Where money has been misappropriated the general rule of equity is, that those wronged may pursue it as far as it can be traced, and may elect to take the property in which it has been invested, or to recover the money.

Oliver *vs.* Piatt, 3 How., 401.

Smith *et al. vs.* Vodges, Assignee, 2d Otto, 183.

VI.

I. (6.) "*The Court refused to decree that the Chatham "Railroad Company did not part with its property "in said bonds until the same should be sold and de- "livered; and that the said bonds, or the money realized "from sales of same, were nothing more or less than a "trust fund in the hands of the company or its agents, "applicable to the payment of debts contracted in the con- "struction of company's road; and that the transfer of "the company's funds from* PICKRELL, AGENT, *to* WHIT- "FORD, AGENT, *in New York, December 3d*, 1868, *and the "removal of the same out of the reach of the complainants, "was a fraud upon them, for which they are entitled to "relief.*"

In the first place, these bonds were issued by the State for a *special purpose*, and delivered to the President of the Chatham Railroad Company upon the *statutory condition* that they were to be used to finish the company's road. The law not only *implied* but absolutely *expressed* this. Any diversion of the means thus employed to complete this work would have been both immoral and illegal; therefore, until these bonds should be *sold* and *delivered*, the title of the bonds remained in the company.

The means necessary to be employed in the construction of the work was to be derived in two, and but two, ways.

First.—By an absolute sale of the bonds.

Second.—By their hypothecation as a collateral, "out of which funds were to be raised" to finish the road.

Hawkins, the *President*, had *authority* to do *either*, to

sell or to *hypothecate!* And, in the case of a sale and the receipt of money on such sale, or in the event of hypothecation and the receipt of money on them as collateral, in either event, the *money thus realized became a "substituted" fund*, which could not, legally, be diverted from the purposes contemplated by the ordinance of the Convention and the Acts of the Assembly authorizing the issue of these bonds.

"*The party of the second part reserves the right to sell* "*any or all of the bonds deposited with said bank, and,* "*in case of sale, the money realized for the same, or a* "*sufficient amount to cover the price of all said iron and* "*fifteen per cent. in addition thereto shall be placed with* "*said bank on the same terms, and represent the said* "*bonds, for all the purposes of this contract.*" (*Exhibit* "*A*," Art. VII., 1st par.)

"*I am to have the right and option to pay in money the* "*sum payable, &c. * * And upon such payments being* "*made, I shall have the right to withdraw from deposit* "*the bonds*," &c. * * * (*Exhibit* "*B.*")

The law attaches to said bonds the character of *trust fund;* and, recognizing that character, both papers, Exhibits "A" and "B," provide *expressly*—what the law would *imply*—*that the funds realized from their sale stand in the place of the bonds, and both the money and the bonds are affected with that trust character.*

If the company, having money, prefers to pay in money, the bonds are to be delivered to the company upon such payment; if the bonds are hypothecated and the money advanced upon them as collateral is repaid, still the bonds are to go back to the company; and if the company never parts with title to the bonds until they are *bona fide* and absolutely *sold* and *delivered* and the money arising from such sale is affected with the same trust that attached to the bonds. This is common learning with respect to a fund to be used for a specific purpose. It is likewise the provisions of the contract.

What were Baltzer & Taal.s' legal or equitable interests in these bonds? The contract contemplated that the bonds of the State of North Carolina, issued in aid of the road, should be deposited as a fund out of which to pay for the iron contracted for. They were to be *valid bonds*, and sufficient in amount and value to "*be equal to the whole* "*purchase money for the said iron, and fifteen per cent.* "*in addition*," &c. And although Hawkins specifies that "fourteen hundred bonds of the State of North Carolina, "each for $1,000, numbered from 1,600 to 3,000, inclusive, "now on deposit, * * * shall remain on deposit," &c., * * (Exhibit "B"), yet, if for any reason these bonds thus deposited should fail to constitute a fund, &c.—then it is submitted that both under the *express provisions* of *the contract* and the *rules of equity*, the complainants have the right to hold the defendant company and the defendants Pickrell, Whitford and Hawkins, the *agents* of the company, responsible for the funds which had been realized either from the sale of the Convention or the Assembly bonds—all the bonds being fixed with the same trust character and issued for the same purpose; and that, when, by *collusion* between the defendant company through Hawkins, with Whitford and Pickrell, the sum of $386,465.92 was transferred from *Pickrell, agent*, to *Whitford, agent*, December 3d, 1868—money and proceeds arising from the sale of Convention and Assembly bonds, issued for the benefit of said road—and the same having been removed from the State of New York, with the intent to deprive complainants of their just rights, so as to be out of the reach of the complainants, and the defendant company thereafter refusing to apply the same or any part thereof to the payment of complainants' debt, contracted for iron to build said road, and which had been actually received and used for that purpose by the company—was in law a *fraud upon complainants* and a *diversion of the funds arising from the sale of said bonds*, for which defendant company should be held liable; and complainants contend that they have the right to have the defendant company account to

them for said fund or so much thereof as will satisfy and pay off complainants' debt.

No particular form of words is necessary to create a trust. The *intention only* will be regarded in a *court of equity.*

Foster *vs.* Fields, 10 Johns. R., 495.

Where a power partakes of the nature of a trust, and is coupled with it, although it may be a discretionary power, a court of equity will enforce the execution of it (and more especially where this trust is based upon a contract).

The pledgee of personal property has the right not only to compel a sale of the pledge for the payment of the debt for which the pledge is held, but for subsequent debts contracted upon the faith of such pledge in his or an agent's hands.

Adams *vs.* Claxton, 8 Ves., 229.
Jarvis *vs.* Rogers, 15th Mass., 389.

And it would seem that, if the bonds which were issued by the State and delivered to the defendant company, under both the ordinance of the Convention and the Act of Assembly, deposited by defendant company as a pledge for the payment of iron, should be sold, that the *funds arising from such sale* would be applicable to the payment of the debt contracted on the faith of these bonds.

The law pledges these bonds for the purpose of constructing the Chatham Railroad, and although Exhibit "B" contains a reference to certain serial *numbers* upon bonds, yet the evidence goes to show that this debt was contracted and the credit given upon the faith, on the part of Baltzer & Taaks, that *any* and *all* of the bonds issued in aid of the road were to be used for that purpose, and as many of them as should be necessary to equal the value of the iron and fifteen per cent. in addition thereto were expressly pledged to them for the purpose of raising money to pay for the iron purchased. And it will hardly be contended that, if these bonds had remained unsold in New York, Baltzer & Taaks could not have compelled the defend-

ant company to have sold them for the purpose of paying any deficit which might have remained due, after the failure to raise money on the worthless bonds which had come into their hands.

If they had a right to reach these bonds, they have the right to follow the fund or so much thereof as is necessary to pay their debt.

Where a party obtains an advantage by fraud, he is regarded as the *trustee* of the party defrauded, and compelled to account.

Wheeler *vs.* Sage, 1 Wall., 518.

VII.

I. (7.) "*The Court refused to decree that the said funds, "so transferred as aforesaid, and retained by the company, was a trust fund in the hands of the company "applicable to the payment of complainants' debt.*"

Trusts may be *express* or *implied*, and in either case they are alike the children of equity. If the bonds sold by Pickrell, *agent*, were not included in express terms in the contract, by reference to their numbers, they nevertheless belonged to and were a component part of the class of bonds which were the subject of contract and negotiation. They were a part, and the better part, of the stock in trade of the defendant company. They were specially mentioned and referred to by the company and its agents to Baltzer & Taaks as constituting the security and only security which the company was able to furnish, out of which funds might be realized to pay for iron. This was distinctly understood by the parties from the first. There were three thousand two hundred bonds issued by the State and put into the hands of defendant company for the purpose of enabling the company to build its road. They were regarded by the company as one class, issued for a special purpose, of one validity, to be used indiscriminately, and were numbered from one to three thousand and two hundred consecutively.

Dr. Hawkins in his answer (pp. 53 and 54 of the Record,

at bottom of page) says, "The said bonds were numbered "from *1,201* to *3,200*, both inclusive, by direction of the "public treasurer, because the said co-defendant (meaning "the railroad company) had already received coupon bonds "of the State under an ordinance of the Convention herein- "before referred to, which bonds were numbered *from* 1 *to* "1,200, both inclusive. * * * * *The charge that this "defendant used the high numbers of the said bonds be- "cause he believed them to be of less validity or for the "purpose of deceiving or defrauding the plaintiffs, is "gratuitously false.*"

The company itself regarded all the bonds dedicated to the same purpose; such was the view of Dr. Hawkins; such were the statements of Pickrell, Whitford and Hawkins to Baltzer, and such was the firm conviction of Baltzer. Some of these bonds proved to be good; some of them proved to be worthless. The good bonds were converted into money and deposited in bank by Pickrell, *agent;* the *worthless* bonds were turned over to Baltzer.

When the bonds which had been turned over to Baltzer had been repudiated on the Stock Exchange, had become unsalable upon the markets, and before he could take steps to exchange them for good bonds which were salable and valuable, or, in their stead, to have sufficient funds which had been realized from sales of other bonds applied in payment of his debt, Hawkins directed Pickrell to turn over to Whitford, *agent*, the money which he thus held, and Whitford was directed by Hawkins to invest the same or some $300,000 of it in United States securities, and all of it was removed from New York and out of the reach of Baltzer & Taaks by the defendant company, hastily and clandestinely.

Now, what reason does the company assign for this? In the XXXII. paragraph of its answer to complainants' bill, at pages 35 and 36 of the Record, it says:

"This was done for the reason that the fund being large, "and *not required for immediate use by the company*, it "was deemed most prudent to invest it in such securities

"as were at the same time safe, certain and most easily "convertible into money *when* the company should *have* "*occasion* to *use its funds* in *carrying* out its *contract* for "the *construction* of *its road*."

This defendant company actually paid $20,000 *premium* to get United States bonds, when it was owing Baltzer & Taaks some one hundred thousand dollars. The company at that time, the 3d of December, 1868, knew the bonds held by Baltzer & Taaks were *unconstitutional*, and, as evidence of it, a few days later, procured an act to be passed by the Legislature of North Carolina, authorizing the issue of *2,000* more bonds, providing in the act for a tax levy, which was not contained in the Act of the 15th day of August, 1868 (reference is made to the Act of December 18, 1868, which the Supreme Court declared unconstitutional), *agreeing* in said act to refund the *2,000 bonds theretofore issued* to the treasurer for *cancellation*.

The haste in which this transfer was made can be explained only upon the ground that it was the *intention* and *purpose* of the company to get this fund out of the reach of complainants, and thereby *defraud* and cheat them out of their rights in the premises.

Courts of equity, says Mr. Maddock, have "an original, a peculiar and exclusive jurisdiction," in cases of trusts, "whether arising from a direct power in the deed or by "construction of law from the situation of the parties."

And Mr. Story says courts of equity will not permit an unfair advantage.

1st Story's Eq., 485, 486.

Neither do courts of equity wait for actual fraud, but will grant relief upon *presumptive* evidence of fraud.

Ibid., 222.

VIII.

I. (8.) "*The Court refused to decree that in equity the* "*complainants had the right to follow this fund in the* "*hands of the company, and have the company account*

"*therefor, and that the company is responsible to com-*
"*plainants for the same, or so much thereof as is suffi-*
"*cient to liquidate complainants' debt.*"

When a party obtains an advantage by fraud, he is regarded as the *trustee* of the party defrauded, and compelled to account.

Wheeler *vs.* Sage, 1 Wall., 518.

It is common learning that a trust fund may be followed into whatsoever converted and into whomsoever's hands it may come, when the same is done with notice, and when a person holds funds affected with such equity, the parties have a right to an account.

IX.

I. (9.) "*The Court refused to decree that the bonds now*
"*held by complainants, and which were deposited by the*
"*Chatham Railroad Company for the payment of iron*
"*purchased by complainants and delivered to complain-*
"*ants to sell and apply the proceeds thereof to payment*
"*due on second, third and fourth deliveries of iron,* ARE
"NOW, *and* WERE *at the time the same were delivered to*
"*complainants*, unconstitutional and void."

The bonds of the State from and after the first day of January, 1868, and at the time of the passage of the Act of the 15th of August, 1868 (the act under which the bonds in question were issued), were not "at par."

William E. Anderson, a witness introduced on behalf of complainants, testified as follows:

"Q. 1. Please state your age, residence and occupa-
"tion?

"A. William E. Anderson; age, 44; residence, Raleigh,
"N. C.; occupation, *bank officer.*

"Q. 2. Where did you reside in the year 1868?

"A. In Raleigh, N. C.

"Q. 3. Preceding and during the year 1868, did or did
"not your position as such bank officer, or otherwise, cause

" you to have any knowledge of the value in the market of
" North Carolina bonds?

"A. It did.

" Q. 4. During the year 1868, or at any time since then,
" have or have not said North Carolina State bonds been
" worth what is called par, in the financial meaning of
" the term; and if not, please state the best of your knowl-
" edge and information about how much below par, if any,
" said North Carolina State bonds were from and after, say
" the first day of January, 1868, or at any time subsequent
" thereto?

" A. *They have not been worth par;* in July, 1868, Old
" State of North Carolina 6's were worth in the market be-
" tween twenty-five and thirty discount; that is to say,
" they sold from seventy to seventy-five dollars per hun-
" dred; subsequently thereto they have ranged much
" lower.

" *Cross-examination waived by defendant.*"

(Record, p. 237.)

II. The complainants maintain that the act under which these bonds of the 15th of August, 1868, were issued is *unconstitutional* upon the ground—

(1.) *That the bonds of the State at the time were not at par.*

(2.) *That the bill (or act) did not levy a special tax to pay the interest annually;* and,

(3.) *That the same was not submitted to a direct vote of the people of the State,* &c.

" *Until the bonds of the State shall be at par, the General*
" *Assembly shall have no power to contract any new debt*
" *or pecuniary obligation in behalf of the State,* except
" to supply a casual deficit, or for suppressing invasion
" or insurrection, *unless it shall in the same bill levy a*
" *special tax to pay the interest annually.* And the Gen-
" eral Assembly shall have *no power* to *give* or *lend* the
" the *credit* of *the State* in *aid* of *any person, association*

"or *corporation*, except to aid in the completion of such "railroads as may be unfinished at the time of the adop- "tion of this constitution, or *in which the State has a* "*direct pecuniary interest, unless the subject be submitted* "*to a direct vote of the people of the State, and be approved* "*by a majority of those who vote thereon.*"

Art. 5, § 4, Constitution of North Carolina, Code of N. C., Vol. II., p. 706.

This section of the Constitution, known as *section* "5" when considered by the Supreme Court of the State (but now designated in the *amended* Constitution as § "4", but identically the same in both), has received a construction by the Supreme Court of North Carolina in the case of "*A. J. Galloway vs. D. A. Jenkins, Treasurer, and The Chatham Railroad Company*", 63d N. C. R., page 147.

This case involved the validity and constitutionality of the Act of the 18th of December, 1868, which provided for the issuing of $2,000,000 of bonds in aid of the Chatham Railroad Company, and in the same bill provided for the levy of a special tax to pay the interest annually.

The Supreme Court decided that such an act was *lending* the aid of the State to a railroad, and, notwithstanding it contained a *tax levy for annual interest*, yet, not having *been submitted to the vote of the people*, was nevertheless unconstitutional.

In declaring the Act of the 18th of December, 1868, *unconstitutional* among other things, the Court say:

(1.) "That the credit of the State was not to be used in "any way, either for a consideration or as a gratuity. The "General Assembly shall have no power to give the credit "of the State to this corporation, by making a subscrip- "tion for its stock, is one sense. The General Assembly "shall have no power to give the credit of the State to "this corporation *by an exchange* of *bonds*, is another sense. "The General Assembly shall have no power to give the "credit of the State to this corporation by endorsing its "bonds, is another sense. And the section might have

"included this class without the additional word 'lend.' "But its being used shows an extreme solicitude to cover "every supposable case in which the credit of the State "might be used, whereby the public debt would be "increased."

Galloway *cs.* R.R. Co., 63d N. C. R., p. 155.

(2.) In the first clause of the section "to contract any new debt" covers the whole ground, without the additional words "or pecuniary obligation."

Ibid, 155.

(3.) "The suggestion that the credit of the State was "given by this statute to aid in the completion of an "*unfinished railroad* was not strongly urged on the argu- "ment, and, indeed, it could not be."

Ibid, 155.

(4.) "The other suggestion that the State has a direct "pecuniary interest in this road was properly *abandoned*, "* * * the exception is obviously confined to roads in "which the State had a direct pecuniary interest at the "*time* of the *adoption* of the Constitution; otherwise the "State might, by a subscription for stock, become directly "interested in every railroad * * * that should there- "after be projected; and thus the restrictions of the Con- "stitution would be of no effect whatever."

Ibid, 156.

(5.) "The General Assembly shall create no 'new debt' "whatever 'except', &c., without providing for the inter- "est; and in respect to debts or pecuniary obligations "contracted by giving or lending the credit of the State "in aid of any * * * or corporation, that shall be done "in no case whatever, 'except', &c., unless the subject is "submitted to a vote of the people, '*until the bonds of* "'*the State shall be at par.*'"

Ibid, 153.

(6.) The section under consideration is worded with much precision, and without the use of expletives; the terms

are intensified. In the first clause the two exceptions have the effect to make it read shall have no power to create any new debt, or pecuniary obligation whatever, "except", &c., * * * unless a special tax, &c. In the second clause the two exceptions have the effect to make it read— "Shall have no power to give or lend the credit of the "State *in any case whatever*, except, &c., unless the sub- "ject be submitted to a vote of the people."

Ibid, 152.

The bill under which the bonds of the 15th of August, 1868, were issued was a more defective bill than the one before the Supreme Court in Galloway *vs.* Jenkins. In the *former* there was *no tax levy;* in the latter there *was* a *tax levy* for *the interest*. Both of these bills were in aid of a corporation, in which the State had no pecuniary interest, and created a new debt at a time when the bonds of the State were not at par, neither one of them was submitted to the people, and in the former there was no provision for a *tax levy* to pay the annual interest. The act of Aug. 15th, 1868, under which the bonds in this action were issued, is *unconstitutional and void*, and the bonds issued thereunder are as worthless as mere slips of paper. When a statute under which bonds are issued is adjudged unconstitutional, the bonds themselves have no legal existence; it is as if they had never been, or there had never been any statute authorizing their issue. And if it should be contended, as it was in the Court below by defendant company, that the bonds which came into complainant's possession were intended to, and did, constitute a payment, it is submitted that a payment cannot be upheld as valid which does not carry with it a value; forged, counterfeit and void bonds or bills *do not constitute a payment*. They are *invalid* from the beginning, and when the validity of a bond depends upon the statute under which it is issued for its life and being, and that statute is *void* and *unconstitutional*, the bonds are affected with its unconsti-

tutionality and fall with it. *They cannot constitute a payment.*

Cooly, 227.

And even if it should be insisted that they do, the *burden of proof* is on the *defendant company* to *show* that B. & T. *received* these *bonds*—worthless as they are—as a *payment of their debt.*

Dorner *vs.* Morehouse, 36 How. Pr., 571.
Crone *vs.* McDonald, 45 Barb., 354.
Gibson *vs.* Loby, 53 *id.*, 191.
Haines *vs.* Pearce, 41 Md., 221.
Bradford *vs.* Fox, 38 N. Y., 289.
Brown *vs.* Olmstead, 50 Cal., 162.

In the first place, complainants deny that they took these bonds as a payment, but allege they took them under the contract as a security out of which to raise money to pay their debt; and there is no *proof whatever* that they took the said bonds as a payment.

In the second place, if it should be held that they were received as a payment, then complainants reply that a payment (?) in *worthless* notes or bonds is no payment at all.

When a bond carries upon its face the declaration that it is issued "in pursuance of an act of the General Assembly," &c., authorizing such issue, "in aid of," &c., a *bona-fide* holder, whether by endorsement or delivery, has the right to *infer* that the bond has been issued lawfully.

Moran *vs.* The Board of Comrs., 2d Black, p. 722.

And his acceptance of said bond does not defeat him of his remedy, in case of its *worthlessness*, to hold the other party responsible for whatever amount of indebtedness such bond was intended to liquidate.

The following is the Act of *the 15th of August*, 1868:

"AN ACT TO AMEND THE CHARTER OF THE CHATHAM RAILROAD COMPANY."

SECTION 1.—"*The General Assembly of North Carolina* "*do enact*, That to enable the Chatham Railroad Company

" to finish their (its) road, the Public Treasurer is hereby " authorized and directed to deliver to the President of the " said Railroad Company, the coupon bonds of the State, " of one thousand dollars ($1,000) each, to an amount not " exceeding two million dollars ($2,000,000), signed by the " Governor, countersigned by the Public Treasurer, and " sealed with the Great Seal of the State, bearing six *per* " cent. interest, the principal payable at the end of thirty " years from the date thereof, and the coupons of interest " payable semi-unnually in such form as the Public Treas- " urer may direct, principal and interest payable at such " time and place as he may prescribe.

Sec. 2.—" Before the Public Treasurer shall deliver any " of said bonds hereby authorized, the President of said " Chatham Railroad Company shall deposit with the Pub- " lic Treasurer the coupon bonds of the company, signed " by him and sealed with the company's seal for the same " amount, and bearing the same interest and date, the " principal and coupons payable at the same time and " place as those of the State hereinbefore directed, to be " issued and paid over to the said company, and to secure " the principal and interest of said bonds, issued by the " company, the State of North Carolina shall have, by this " act, a lien upon all the estate of the same, real or per- " sonal, which they may now have, or may hereafter " acquire, between the point of intersection with Western " Railroad, and the South Carolina State line, including " that at both points, together with all the rights, fran- " chises and powers thereunto belonging, or that may here- " after belong to said company, in respect of that portion " of their line, which lien shall be more effectually secured " by a first mortgage duly executed by said company to " the State, and registered in the Register's Office in the " County of Wake, and in the office of the Secretary of " State, and in case of the failure of said company to pay " the *semi*-annual interest on their bonds for twenty-four " months, after said interest shall become due, or to pay " the principal of said bonds for twelve months after their

" maturity, the Board of Internal Improvements, for, and " in behalf of the State, may enter upon, and take posses- " sion of, in the property hereinbefore specified, and dis- " pose of the same by sale, so as to protect the State.

Sec. 3.—" The Chatham Railroad Company may at any " time before maturity discharge the bonds of said com- " pany deposited with the Public Treasurer, by substituting " in lieu thereof coupon bonds of the State, or other indebt- " edness of the State, or payment in national currency.

Sec. 4.—" That any Railroad Company within this State " shall be at liberty to take or purchase stock in, or lend " money to, or purchase bonds of this or any other Rail- " road Company, in this or any adjoining State.

Sec. 5.—" This Act shall be in force from and after its " ratification."

" Ratified the 15th day of August, A. D. 1868."

(*Private laws.* Special Session General Assembly of North Carolina, begun the 1st day of July, 1868. Chapter 14, p. 15.)

X.

I. (10.) " *The Court refused to decree that the complain-* " *ants have an equitable lien upon the property, rights,* " *franchises and income of the Chatham Railroad Com-* " *pany, now the Raleigh and Augusta Air Line Railroad* " *Company, for the payment of their said debt.*"

When complainants' debt was contracted, it was represented to them, that the security offered for its faithful payment, would be *valid* bonds of the State of North Carolina, issued by the State in aid of the road, and that these bonds would not only have the good faith of the State behind them, but would likewise have the property, franchise, &c., of the defendant company, as evidenced by a mortgage executed by the company to the State, and the said bonds were issued by the State carrying with them this lien. Upon the faith of these representations the contract in this action was made, and the credit given.

The bonds issued, carried with them an equity in favor of the State, under the *statute*, and complainants were induced to believe by representations made to them by defendant company, that this equity would enure to their benefit; else why the representation?

II. Complainants came into possession of these bonds before maturity, and without notice of their invalidity. They parted with a *valuable consideration*, to wit, *iron* (nearly one hundred thousand dollars' worth). They held the bonds as a security—they proved unsalable and worthless.

In the meantime, the defendant company, without notice to complainants, cancelled the mortgage given the State on account of these bonds, by substituting other bonds, and took up their own, which were *valuable*, leaving the complainants without any security whatever.

When the railroad company took these bonds from the State, and sent them out upon the markets of the world as valid bonds, and obtained credit thereby, it became responsible for them, and, if the defendant company represented that said bonds were secured by a mortgage upon its property, and faith was given to that representation, it cannot now be heard to say that the act authorizing their issue being unconstitutional, the mortgage given to secure them likewise falls. This might be true as between the company and the State; but the company being put in a position of responsibility for the circulation of the bonds, and having obtained credit and valuable property thereon, it does seem that it was such an *unfair* advantage that a court of equity would place complainants in the same position the State would have occupied had the bonds been good and the State had paid money thereon for the company.

Bonds, when transferred before maturity, are affected with, and entitled to, all the rights and equities ascribed to commercial security.

Moran *vs.* Board of Comm., 2 Black, p.722.

III. If the State had paid these bonds, or even the interest, and the defendant company had defaulted on the

principal or interest of its bonds, pledged with a mortgage as security to indemnify the State, the State, most clearly, would have had the right to have foreclosed the mortgage and enforced by sale its lien in that behalf.

The complainants, upon the faith of these bonds, and their statutory and mortgage security, vouched for and endorsed by the company, furnished the company nearly one hundred thousand dollars' worth of railroad iron, which the company received and used upon its road; and, after the defendant company receives this iron, uses it, and these bonds are known to them to be valueless, failing absolutely to "constitute a fund out of which complainants are to be paid for their iron"—it, nevertheless, under one pretext and another, under one statute and another, passed at its instance and for its benefit, in derogation of complainants' rights, and in violation of its obligations to complainants, succeeds in getting up its bonds and cancelling the mortgage upon which these bonds were issued. A deposit of title deeds as *security* for a debt creates a lien which is considered an equitable mortgage.

Mandeville *vs.* Welsh, 1 Wheat., 235.

In our case the State had not only a *statutory* mortgage, but a *contract lien* and *mortgage upon the property of defendant company.* Through the defendant company these bonds of the State find a lodgment for a valuable consideration in the hands of the complainants. Now, will not the complainants be placed in as good position with respect to the security given by the company for these bonds as the State would have occupied had it paid money for the company thereon? And especially when the defendant company represented to complainants as a part of the inducement to take these bonds that the property of the company was mortgaged to the State to indemnify the State on these bonds.

Railroad Company *vs.* Schults, 103 U. S., p. 118, 140, 144–5.

XI.

I. (11.) "*The Court refused to decree that the mortgage "or deed in trust executed by the R. & A. A. L. R.R. Co. "on the 7th of April*, 1877, *to Charles M. Robinson et al., "trustees, to secure the payment of the principal and in- "terest of what is known as guaranteed or preferred "stock issued by the company, is subordinate and subject "to the debt of complainants, and that their debt against "the Chatham Railroad Company is not affected there- "by.*"

II. If the complainants have not the right to be subrogated to the rights of the State—as if the State had entitled herself to foreclose the mortgage executed by defendant company to save the State harmless by reason of the State's liability upon the bonds of the 15th of August, 1868, then it is submitted that the complainants debt *ante*dates the mortgage of the 7th of April, 1877, and is *excepted* from the operation of said mortgage by an express statute of the Legislature of North Carolina.

We call YOUR HONORS' attention to the chronological order of the following Acts:

(*a.*) *On the 13th of Dec.*, 1871, the act was passed under which defendant company (*i. e.*, the Chatham Company) changed its name to Raleigh and August Air Line Railroad Company, which act authorized the company to issue stock, &c,, and make mortgages, &c.

Pub. Laws of N. C., Act 1871-2, pp. 11, 12, 13.

(*b.*) *On the 9th of July*, 1872, the company, through its stockholders, accepted the Amendatory Act.

Record, p. 292 Resolutions, &c.

(*c.*) *On the 19th July*, 1872, the company, by resolution, authorized the execution of mortgages, &c., to secure preferred stock, &c., that might be thereafter issued.

Record, pp. 293, 294.

(*d.*) *On the* 1*st of March*, 1873, the General Assembly passed an act to regulate mortgages by corporations, &c.

Pub. Laws N. C., Acts of 1872-3, ch. 131.

(*e.*) *On the* 22*d April*, 1873, the Raleigh and Gaston R.R. Co. subscribed for $1,000,000 preferred stock.

Record, p. 290 and p. 32.

(*f.*) And *on the* 7*th day of April*, 1877, the mortgage or trust deed was executed to secure the preferred stock of the R. and G. R.R. Co. *et al.* holding such stock. Before the Raleigh and Gaston Railroad Company ever subscribed for or received the preferred stock, for the security of which the mortgage or trust deed to Robinson *et al.*, trustees, was executed, and more than *four years prior to the execution of the said mortgage or trust deed*, the General Assembly *passed* the Act of March the 1st, 1873, *section* 3 of which is in these words:

"PROVIDED, That all *debts* and *contracts* of any *cor-*
"*poration prior* to, or *at the time* of the *execution* of *any*
"*mortgage* or *deed of trust* by *such corporation, shall have*
"A FIRST LIEN *upon the property, rights and franchises* of
"*said corporation*, and shall be paid off and secured before
"such mortgage or deed of trust shall be registered."

Pub. Laws of N. C., Acts 1872-3, ch. 131.

By virtue of this act the complainants have a *first lien* on the property, rights, franchise, &c., of defendant company, over and above any mortgage or trust creditor embraced and included in the deed of the 7th of April, 1877, to Robinson *et al.*, trustees, and by express provision of the said statute, such deed of trust, as well as all other mortgages subsequent, if there should be any, are subordinated to the statutory rights and lien of complainants, their debt having been contracted in 1868.

XII.

I. (12.) "*The Court refused to decree that the ex-*
"*change by defendant company of bonds, other than the*
"*bonds issued under the ordinance of the Convention of*

"1868, *and the Act of Assembly of August the* 15*th*,
"1868, *for mortgage bonds of the company, by virtue of*
" *said acts, with the public treasurer, was a fraud upon*
" *complainants, and that in equity complainants have*
" *the right to hold the company responsible therefor.*"

The Public Treasurer of the State must have been of the opinion that the Ordinance of the 11th March, 1868, and the Act of Assembly of August the 15th, 1868, under which the bonds were issued and used by the defendant company in aid of constructing its road, restricted the defendant company in redeeming its own bonds in the hands of the Treasurer of the State, as a security, &c., *to the bonds authorized to be issued under those acts;* and, after failing to get at its bonds, with other bonds, the defendant company, with the knowledge that complainants had some one hundred and fifty of these bonds—procured in fraud of complainants' rights the passage of *the Act of the* 22*d of March*, 1875—whereby it was enabled to purchase other bonds at a *nominal* price, and take up its mortgage bonds, which had been filed as a security and indemnity to the State on the bonds held by complainants—and this, too, without notice to complainants.

XIII.

I. (13) " *The Court refused to decree that the defendant*
" *company is a trustee in equity to the amount of the*
" *value of the mortgaged bonds of the company received*
" *in exchange for State bonds, other than those issued*
" *under the ordinance of the convention of the* 11*th of*
" *March*, 1868, *and the Act of Assembly of the* 15*th of*
" *August*, 1868, *for the benefit of the holders of the bonds*
" *issued under the said* 11*th March and* 15*th of August*
" *Acts, and particularly for the benefit and to the use of*
" *complainants, to the amount of the bonds held by them,*
" *or so much thereof as will pay off and discharge com-*
" *plainants' debt.*"

If it be true that complainants would have been entitled to require the company to substitute the mortgage bonds for the State bonds, in the hands of complainants, then it follows if defendant company took up those mortgage bonds in derogation of their rights, they can hold defendant company liable, as trustee, to the amount of the bonds thus exchanged, or to so much thereof as will pay complainants' debt.

II. The record shows, page 230, that 1,650 of the bonds of the Act of August 15th, 1868, were in the custody of the defendant company in the Winter of 1871, and the answer of defendant company shows (Record, page 36, paragraph 35) that all of these bonds were, with other (some 300) exchanged with the Public Treasurer for mortgage bonds of the company.

III. The defendant company, recognizing the rights of the complainants in the premises to notice of this exchange, allege in said XXXV. paragraph of defendant company's answer (Record, p. 36) notice to complainants of this intended exchange. Complainants deny it, defendants do not prove it, and it stands for nothing.

But if defendant company did not regard complainants as equitably entitled to this exchange for the bonds then in their possession, why were they notified? Why trouble to send complainants word about this exchange, if it were not that defendant company considered them entitled to these railroad mortgage bonds in the place of the invalid State bonds held by them, that they might take advantage of this security to save their debt? The defendant company, having made itself responsible for these bonds, complainants are entitled to avail themselves of every and any indemnity furnished or given by the company to the State, to validate the same as a security in payment of complainants' debt.

Where a party obtains an advantage by fraud, he is regarded as the trustee of the party defrauded, and compelled to account.

Wheeler *vs.* Sage, 1 Wall. 518.

The defendant company obtained an unfair advantage of complainants not only in the removal of its *bond* funds from New York in December, 1868, but also in the exchange of bonds other than those contemplated in the Acts of 11th March and 15th August, 1868, by the authority and color of law granted in the Act of March, 1875.

Courts of Equity will not permit an unfair advantage.

1st Story, 485, 486.

If defendants have *abused* the *confidence* of the *complainants*, a Court of Equity will relieve them.

1st Story, pp. 339, 363.

Where the assignor of the debt has a collateral security the assignee will be entitled to the benefit of the security in the absence of an agreement to the contrary between the parties.

Foster *vs.* Fox, 4 Watts & Serg., 92.
Wait's A. & D., 3d vol., p. 146.

XIV.

I. (14.) "*The Court refused to decree that the Raleigh "and Augusta Air Line Railroad Company is liable to "complainants for the amount of their said debt for iron "furnished by complainants and received and used by "defendant company, and that the complainants were "entitled to a* FINAL *judgment therefor.*"

The bill alleges and the answer admits that the R. & A. A. L. R.R. Company is the Chatham Railroad Company, for the benefit and use of which the bonds mentioned in the pleadings were issued and the contract sued on was made.

II. If the complainants are correct in their construction of the contract or the equities arising therefrom in their behalf, the defendant company is liable to them for the amount of the debt, and they are entitled to final judgment thereon against defendant company.

XV.

I. (15.) "*The Court refused to give the complainants a "final judgment and decree against the Raleigh and Au- "gusta Air Line Railroad Company, for the sum of* $93,- "615.62, *with interest thereon at* 7 PER *cent. from the* 2d "*day of November*, 1868, *with the right to enforce the col- "lection thereof, together with the costs, out of the prop- "erty, rights, franchise, goods, chattels and estate of "said company, and as against all prior liens, and more "especially as against the lien attempted to be created "under the mortgage deed of April the* 7*th*, 1877."

II. It is alleged in the bill and not denied in the answer that the balance on the 2d, 3d and 4th deliveries of iron, due complainants when the bonds were delivered to them, was the sum of $93,615.62, and, according to the rate of interest allowed by the laws of New York, this sum bears interest from the 2d day of November, 1868 (the time of the delivery of the iron), at the rate of seven *per centum per annum*, making in the aggregate principal and interest up to the 2d day of November, 1885, the sum of $205,- 018.20.

If complainants are entitled to anything they are entitled to this sum, and to such orders and decrees of this honorable Court as may be necessary to realize the same.

"When a court of equity," as is said by Mr. Chief Justice Waite, in Ober *vs.* Gallagher, 3d Otto, 199, "has "obtained jurisdiction of the parties and the subject-mat- "ter of the action for one purpose, it will make its juris- "diction effectual for complete relief."

And in Mitchell *vs.* Moore, 5th Otto, 587, the Court says: "Under the prayer for general relief in a bill such relief "necessary to carry into full effect the particular relief "demanded will be granted."

III. The complainants contend that from the beginning of this transaction to the present time they have not been dealt fairly with by this defendant company; that trick,

artifice, fraud, concealment and falsehood have characterized the conduct of the defendant company through all its dealings with complainants respecting this contract.

It was represented to complainants that Whitford and Pickrell had authority to make the contract sued on in behalf of defendant company; the same was supervised, amended and modified by Hawkins; the iron was obtained and used by the company; the bonds deposited as a *security* became worthless; the defendant company, through its agents, by verbal, written and telegraphic communications, induced complainants to believe the bonds would be taken up and the money paid, or otherwise satisfactorily arranged. For a period of more than four years complainants, relying upon the representations thus made, forbore to sue the defendant company upon said contract. Lulled into a feeling of safety—chloroformed, as it were—by oft-repeated assurances of a settlement and satisfactory arrangement, not until every means within complainants' reach had been exhausted, did complainants call upon the courts for justice, *when*, for the *first time*, they were given to understand, in *February*, 1874, when defendant company filed its answer to plaintiffs' complaint in the common-law suit, that it repudiated its said contract, and that the said contract was the contract of *Pickrell* and *not* the contract of the company; that neither Pickrell nor Whitford were agents of the company in said transaction, and it was in no way bound thereby; and in this suit, after having been denied in the common-law suit the *plea* of the Statute of Limitations, they now invoke the aid of this Honorable Court in that behalf.

IV. If it should be held that the contract sued on, upon its face, was the contract of Pickrell, then it is submitted that the proof abundantly shows that it was intended to be the contract of defendant company, and that a court of equity will always protect a party against a plain mistake in a written agreement, in the furtherance of justice, and, as is said in *Moran* vs. *The Board of Comrs.*, hereto-

fore cited, "Corporations are as strongly bound as individ-
"uals are, to a careful adherence to truth in their dealings
"with mankind, and they cannot, by their representations
"or silence, involve others in *onerous* engagements, and
"then defeat the calculations and claims which their own
"conduct had superinduced."

That, as is said by Mr. Justice Miller, in *Eureka Co.* vs. *Bailey Co.*, 11 Wall., 488, "An agreement made by an "agent of a corporation is the contract of the corporation, "although made without any resolution of the Board of "Directors, and though the seal used was the private seal "of the agent, if the agent was authorized to execute it, OR "THE COMPANY RATIFIED HIS ACT." And, as is said in *Townsend* vs. *Chappell*, 12 Wall., 681: If the R.R. Company justified the belief (of B. and T.) that Pickrell, Whitford or Hawkins, either or all of them, were authorized to negotiate this contract, it is ESTOPPED to *deny their authority*, or *repudiate their representations*.

If it is necessary to reform this contract in the interest of justice so as to make it speak the truth, a court of equity will do it.

If the contract, upon its face, is the contract of the defendant company, then the Court having obtained jurisdiction upon the equitable relief claimed in the bill will, nevertheless, proceed to such orders, judgments and final decrees as will do "equal and exact justice between the parties."

If there was a combination and conspiracy on the part of Pickrell, Whitford and Hawkins to cheat and defraud complainants, the Court will grant relief.

If the contract is vicious the Court will grant relief.

If in this transaction the defendant company, or its agents, took an unfair advantage of complainants, the Court will grant relief.

If by concealment, silence, or abuse of confidence, the complainants have been wronged, the Court will grant relief.

If there has been *actual fraud* the Court will grant relief.

If there is a *presumptive evidence* of *fraud*, the Court will grant relief.

There is scarcely an element of *equitable relief* that is not disclosed in this suit; and the records of this Honorable Court will hardly furnish a case in which there is so meagre a defense and such little *proof* to sustain the high-sounding rhetoric of the several answers.

Conclusion.

At a time when *fraud* and *corruption* were undermining the integrity of the State—when legislation was sold for a price—when extravagance and speculation were sapping the foundations of public virtue—when uncertainty and insecurity were seen and felt in every department of the State Government—when the State itself was bowed into the dust under a heavy debt—when confidence had been shaken to its very centre—when the devastations of war had laid waste the fertile fields and valleys of the commonwealth—when private and public enterprises moved with a heavy tread—when railroads and other internal improvements were languishing and perishing amidst the desolation which followed the march of hostile armies—the defendant company appeared upon the scene. The Legislature was in session, a vast number of bonds were issued, and among them *two millions* for defendant company, and, "*for services rendered in getting through the bill*" says Dr. Hawkins: "*I let* General Littlefield have *one hundred bonds * * taking his draft on New York for the amount which was accepted by J. F. Pickrell & Co., and paid as above stated.*"

Record, p. 232 (371).

How it was paid, let Pickrell's testimony show—it sufficed, however, to make one of the vouchers submitted by Dr. Hawkins to the Investigating Committee, when accord-

ing to *Whitford in his letter to Pickrell, March* 2, 1870 (Record, page 114), "*his showing* [*would*] *agreeably surprise his friends and confuse his enemies.*"

With these two thousand bonds, and the twelve hundred bonds received under the ordinance of the convention, being unable to negotiate them among his own people, Dr. Hawkins, as the representative of the defendant company, with his friend and *agent Whitford* sought in the markets of New York "moneyed friends" to aid him. Under a previous arrangement with *Pickrell, agent*, then a resident of New York, they met with a common purpose, a common interest and a common end, and in a short time found their "moneyed friends" in the persons of the complainants. The sequel to this acquaintance and this visit to New York is known to the Court. The record is full of it! Of how complainants were induced to make the contract, of how they were treated as to payments, of how they were deceived as to the securities offered, of how they were deprived of the bond fund by its transfer to Whitford, of how they were cheated in the exchange of bonds, of how they were deceived and misled by broken promises and false representations, of how, for near seventeen long years they have been kept out of their money and robbed of their iron, and of how the defendant company by the repudiation of its *contract-name*, the assumption of another, and the registration of a heavy mortgage, has attempted to put beyond the reach of complainants their property and effects—all this and more appears upon the face of the Record! And, in the meantime, laden with the commerce of two States, the cars of the defendant company have been rolling day and night, over iron furnished it by complainants, for which they have received no consideration.

It is for these wrongs the complainants come into this *Honorable Court* and ask *that relief which alone a court of equity can give.*

For many generations the jurisprudence of England has been the model from which has been constructed the judicial systems of civilized governments, and since the

foundation stones of human liberty and human rights were firmly laid at Runemede, all English-speaking people throughout the world have been taught to respect her laws and her courts of justice.

In the earlier times, when rights and wrongs depended for their remedies upon the superior physical strength of contending adversaries, when property-rights and human life were alike imperiled by the unrestrained license of the vicious, on the one hand, and the arbitrary edicts of corrupt kings on the other, the benign and salutary influences of liberty regulated by law were wholly unknown. Out of the elements of a semi-barbaric state—in a great degree—have been evolved the principles, maxims and rules of action which have come down to us from our English ancestors. Broad and deep they laid the foundation stones of England's jurisprudence! But broader, deeper, stronger and more enduring are the foundation stones of her courts of equity laid by her judges; and whilst her common law courts have seen many changes, have been encompassed 'round about with restrictions, and their powers curtailed with statutory limitations, yet her courts of equity have preserved their jurisdiction and power, and for ages have stood as a mighty fortress and castle, within whose sacred precincts no man may seek refuge with "unclean hands."

These principles of English jurisprudence, both at law and in equity, obtained a strong foothold on American soil in the days of the Colonies. Surviving the Revolution, they have been handed down to us by our forefathers, and in all the States of this Union they form the bed-rock of our judicature.

Under the peculiar institutions incident to republican government, many changes in the forms of procedure have been brought about. In some of the States the distinction between actions at law and suits in equity have been abolished, and the code of practice has been regulated to suit the commerce, trade and convenience of communities. But in none of the States of this Union, nor in the Courts (Federal or State), have the great principles and

adequate remedies belonging to courts of equity been abridged or in the slightest degree infringed! On the other hand, our judges and legislatures have greatly enlarged them, so that now, in this enlightened age, there is no *Right* without a *Remedy* in the courts of this mighty Republic.

The most eminent jurists of ancient and modern times have always held that the administration of justice largely depends upon the proper recognition of the great doctrines of equity, and none of the great judges of the earth have gone farther in the application of the doctrine than our own illustrious judges, whose names, like imperishable stars, illumine the firmament of our jurisprudence.

These great doctrines, being firmly imbedded in our system, incorporated in our laws and administered without stint by our judges, make for us a jurisprudence whereby every right may be enforced and every wrong redressed.

To such a court have complainants come!

Emancipated from the technicalities and limited powers of a court of law, they stand before the uncovered throne of justice—in the presence of CHANCELLORS, whose jurisdiction pervades the kingdom of conscience.

Surely, in this presence, the weary and injured suitor may find a resting place.

Surely they, whose rights have been trampled in the dust, whose property by device, circumlocution, fraud and unfair advantage has been wrested from them, who, by the superior cunning and dishonesty of their neighbors, have been robbed under the forms of law, may look with confidence to this *Honorable Court* to redress the wrongs to which they have been subjected and enforce the rights to which they are entitled, with full assurance that the *Judges of this great Court* know no *dead line* beyond which they cannot go in such final and perfect judgment as will secure the fruits of their just decrees.

A. H. Garland
Wm. A. Gaines
Of Counsel

115-634

Supreme Court of the United States.

OCTOBER TERM, 1885.

No. 64.

HERMAN R. BALTZER and WILLIAM G. TAAKS,
Complainants and Appellants,

vs.

THE RALEIGH AND AUGUSTA AIR LINE RAILROAD COMPANY, THE RALEIGH AND GASTON RAILROAD COMPANY, JOHN D. WHITFORD, and WILLIAM J. HAWKINS, impleaded, &c.,
Defendants and Respondents.

BRIEF

ON BEHALF OF DEFENDANTS AND RESPONDENTS.

EDMUND RANDOLPH ROBINSON,
THOMAS C. FULLER,
Of Counsel.

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(3) For accounting by defendants Hawkins and Whitford of profits made by them as alleged undisclosed members of the firm of Pickrell & Co., to extent of $93,615.57, alleged to be due on contract "A" 14–15

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The contract "A" on its face is not the contract of the Railroad Company, but is the contract of Pickrell. As it stands it is perfectly clear and intelligible. It cannot be treated as the contract of the company, or made into the contract of the company without becoming utterly unintelligible and irrational.

POINT SECOND 33–34

These considerations are of themselves fatal to the reformation sought. A court of equity will not, on any testimony, reform portions of a contract, as to which mistake is alleged, when the effect of the desired reformation is, necessarily, to create a conflict with other portions as to which no mistake is pretended, or to render such portions nugatory and absurd.

POINT THIRD 35–36

What complainants and Pickrell intended to be embraced in their written contract "A," having as matter of fact been embraced therein, proof of an oral collateral understanding between them that the writing should have a meaning and effect

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differing from and in conflict with that appearing by its terms, was inadmissible and ineffectual to override them.

POINT FOURTH 37–39

There is not a particle of proof that the Railroad Company ever authorized Pickrell to bind it by the contract "A" or by any contract whatever. In the absence of such authority the Railroad Company is not bound by the contract no matter what the "understanding" of complainants and Pickrell may have been.

POINT FIFTH 40–43

But there was no "understanding" between complainants and Pickrell that the contract "A" should bind the Railroad Company. The allegation of such an "understanding" is a mere pretence made for the purposes of this suit not established by any proofs, and demonstrated to be false by overwhelming testimony.

POINT SIXTH 44–46

The complainants were paid for their iron, in full, by Pickrell, in money and in bonds or their proceeds. There is nothing whatever due them under the contract "A."

POINT SEVENTH 47

If it be the fact, as shown by complainants' notices of sale and as testified to by Pickrell, that the bonds received by complainants were sold by them and the proceeds were applied in payment and discharge of amount due complainants, it is quite immaterial with respect to the question of payment whether the bonds were or were not subsequently repudiated by the State of North Carolina, or held unconstitutional by its Courts.

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POINT EIGHTH 47–50

If, on the other hand, it be the fact, as testified to by complainant Baltzer, that the bonds were accepted by complainants, as payment, at the amounts at which they are stated in their notices of sale to have been sold, the alleged subsequent repudiation of them, by the State of North Carolina or the alleged decision of its Courts that they are unconstitutional are equally immaterial.

POINT NINTH 51

There is no proof that the bonds in question were ever repudiated by the State of North Carolina or held unconstitutional by its Courts.

POINT TENTH 52

The iron contract "A" not having been authorized by the railroad company, and being, moreover, in the intent of the parties and in truth and in fact as well as in form, the contract of Pickrell, and not that of the railroad company, the complainants are not entitled to any relief whatever against the railroad company.

POINT ELEVENTH 52

Complainants having been paid, in full, by Pickrell for everything due them under the iron contract "A," and the contract having been closed by the mutual assent of themselves, Schepeler & Co. and Pick rell, complainants are not entitled to relief against any of the defendants.

POINT TWELFTH 52–55

Complainants are not entitled to relief against the railroad company, Hawkins or Whitford, on the alleged ground that

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Hawkins, the president of the company, was interested in the construction contract of Pickrell & Co. to build the railroad and that the construction contract was not a *bona fide* contract.

POINT THIRTEENTH 56–57
Complainants' claim is barred by the Statute of Limitations, which is interposed by all the answering defendants as a defense to this action.

POINT FOURTEENTH 58–63
The complainants, as alleged holders of 140 State bonds, issued under the Act of August 15, 1868, and not returned to the State, did not acquire any lien upon the railroad of the Air Line Company, defendant, and are not on that ground entitled to relief against that company or the Raleigh and Gaston R.R. Co., the owner and holder of a majority of the guaranteed stock of the Air Line Company secured by a first mortgage of its railroad, &c., to Robinson and others, Trustees.

POINT FIFTEENTH 64–65
Complainants are not entitled to relief of any kind because there is a fatal defect of parties in that their co-contractors, Schepeler & Co., are not made parties to the action.

LAST POINT 65
The decree appealed from should be affirmed, with costs.

Appendix to Points 66–79

Supreme Court

OF THE UNITED STATES.

HERMAN R. BALTZER and WILLIAM G. TAAKS,
Complainants and Appellants,

vs.

THE RALEIGH AND AUGUSTA AIR LINE RAILROAD COMPANY, THE RALEIGH AND GASTON RAILROAD COMPANY, JOHN D. WHITFORD and WILLIAM J. HAWKINS (impleaded with JOHN F. PICKRELL),
Defendants and Respondents,

Statement of Pleadings and Proofs, and Points for Defendants Respondents.

This is an appeal from a decree of the Circuit Court of the United States in and for the Western District of North Carolina made and entered at the adjourned July term, A. D. 1882, adjudging that the said complainants are not entitled to the relief sought by their said bill or to any part thereof, and dismissing the same.

The error assigned is the refusal of the Court to grant the relief sought in the bill of complaint, and dismissing the same (fol. 491).

The following are the statement of the pleadings and proofs and the points for respondents on said appeal.

STATEMENT OF PLEADINGS.

Complaint.

The bill of complaint was filed by the complainants Baltzer & Taaks against the defendants herein on the 18th day of October, 1878, seeking principally the following relief:

That a certain agreement, annexed thereto as Exhibit "A" and dated Sept. 11, 1868, between complainants Baltzer & Taaks *and another firm named Schepeler & Co.*, as parties of the first part, and John F. Pickrell, as party of the second part, may be so reformed as to require the name of the defendant, the Raleigh and Augusta Air Line Railroad Company, to be substituted in the place of John F. Pickrell, as party of the second part, and when so reformed be enforced as the agreement of the said company, the same as if its name had been signed and its corporate seal affixed thereto.

That complainants be adjudged to have a lien upon the franchises, &c., of the defendant the Raleigh and Augusta Air Line Railroad Company prior to any liens created since September 11, 1868, to the extent of $93,615.57, with interest since the 2d November, 1868, and that any incumbrance created thereon since the 11th September, 1868, are null and void, as against complainants, into whomsoever hands the same may have passed or by whomsoever the same may be held.

That the defendant, the Raleigh and Augusta Air Line Railroad Company may be decreed to be indebted to complainants in the sum of $93,615.57 with interest from the 2d day of November, 1868, and that complainant may have judgment and execution against said company therefor.

The contract "A" which it is sought to reform by making it a contract of the Air Line Company

instead of that of Pickrell, and upon which, when reformed, the Air Line Company is alleged to be indebted to the complainants *alone and irrespective of Schepeler & Co., their co-contractors*, in the sum of $93,615.57, is annexed to the Bill of Complaint pp. 18–22, and is in terms a contract between complainants (Baltzer & Taaks) and Schepeler & Co., as parties of the first part, and *John F. Pickrell of the City of New York*, as party of the second part. It is subscribed as follows:

SCHEPELER & CO.,
By John T. Schepeler,
BALTZER & TAAKS,
By H. R. Baltzer,
JOHN F. PICKRELL,

and bears an acknowledgment dated the 24th Sept., 1868, by which John F. Schepeler, H. R. Baltzer and *John F. Pickrell* known to the notary to be the individuals described in, and who executed the instrument, severally acknowledge that they executed the same, and Schepeler acknowledges that he executed the same in the name of as the act and deed of the firm of Schepeler & Co. of which he is a member, and Baltzer acknowledges that he executed the same in the name of and as the act and deed of the firm of Baltzer & Taaks of which he is a member. It will be observed, therefore, that while Schepeler and Baltzer sign the instrument in the names of and for their respective firms, and acknowledge its execution in the name of and as the act and deed of their respective firms, *Pickrell* signs it *as an individual*, and acknowledges its execution in his *individual* name and as his *individual* act and deed.

It will also be observed that there is not a word in the body of the instrument to express or even suggest the idea that Pickrell's relation to the contract as party of the second part is that of agent and not that of principal. He is described as principal, contracts as principal, signs as principal and acknowl-

edges as principal, and so far as the Air Line Company is concerned, its name, which was then the "Chatham Railroad Company," is not mentioned in the instrument from the beginning to the end.

The instrument, Ex. A, dated September 11, 1868, provides:

1. For the sale and delivery *by the parties of the first part, Schepeler & Co., and Baltzer & Taaks to the party of the second part, John F. Pickrell,* of ten thousand tons of iron rails (English or Welsh) at the price of $79.36.

2. The iron to be delivered within ten months from date at Norfolk in certain quantities and at certain times specified.

3. The iron to be paid for as follows: The party of the second part is forthwith to deposit in the Continental Bank such an amount of North Carolina State Bonds as will at the market price on the day of deposit be equal to the whole purchase money and 15 per cent. in addition, which margin is to be kept good until the performance of the contract. The bonds are to be held by the bank subject to the joint order of the parties to the agreement and William J. Hawkins. On the presentation of a warehouse receipt or ship's delivery order for any lot of iron *the party of the second part and Hawkins* are to join with the parties of the first part in drawing an order on the bank in favor of the parties of the first part *for so many of the bonds as will at the market price on the day of drawing equal the sum payable for such lot of iron at* $79.36 *per ton or pay the amount in money.*

Or upon presentation of a bill of lading for any lot of iron *the party of the second part and Hawkins* shall join in an order in favor of the parties of the first part for so *many of the said bonds as will at the market price equal the sum of* $46 *per ton,* the

balance payable for said iron being payable in like manner on the arrival of the vessel.

[That is to say, the party of the second part, Pickrell, has the option of paying for the iron on delivery of documents of title either in cash or in such number of State bonds as on the day of payment at their then market value are equal to cash.]

4. Provides for the event of the loss of the iron at sea, or in port, or for any cause beyond the control of the parties of the first part.

5. Provides that the warehouse receipts, &c., are to be presented at the office of *the party of the second part* in New York.

6. Provides that it is understood that the bonds are deposited as a fund out of which to pay for said iron, and that the parties of the first part are to have a lien on the same for the faithful performance of this contract on the part of the party of the second part, but it is also understood that the parties of the first part do not look solely to the said bonds for payment, and if for any reason they should at any time *fail to constitute a fund for payment*, the parties of the first part are nevertheless to be paid for the iron at the same rates and times as hereinbefore provided.

[That is to say not that a payment for a delivery of iron made and accepted in bonds at their market value at the time of such delivery is not a final payment so far as such delivery is concerned so that the risk of subsequent depreciation in the value of the bonds received in payment is with the parties of the first part, but merely that if in consequence of a depreciation in the value of the bonds constituting the fund for discharging the contract, the fund should be exhausted or become inadequate at market values to discharge the entire contract and to pay for remaining deliveries, the party of the

second part shall not thereby be relieved from the obligation of accepting and paying for such deliveries, but shall pay for them in cash.]

7. Provides that the *party of the second part* may sell any of the bonds, provided the proceeds are placed in the bank to represent the bonds for the purposes of the contract.

8. Provides for transportation of the iron to Norfolk instead of New York on request of *party of second part*, and paying in addition to price difference of freight.

9. Provides for measure of damage recoverable by the *respective parties to the agreement* in the event of breach.

The bill alleges that contemporaneously with Exhibit "A" another paper was executed which is annexed as Exhibit "B" (Record, fol. 34).

That paper bears date September 11, 1868, is signed "W. J. Hawkins, President Chatham Railroad Company," and begins with the following recital:

"Whereas, Messrs. Schepeler & Co., Messrs. Baltzer & Taaks, and *John F. Pickrell* have entered into an agreement of even date herewith, by which means the said Schepeler & Co., and Baltzer & Taaks agree to sell and deliver on certain terms therein mentioned ten thousand tons of iron rails *to the said John F. Pickrell*, a copy of which said agreement is annexed hereto, and which said agreement provides for *the payment for said iron by the said Pickrell, by the appropriation of certain bonds of the State of North Carolina* in the manner set forth in said agreement."

And the paper then provides that 1,400 North Carolina bonds of $1,000 each, numbered 1600 to 3000, now on deposit with the Continental Bank to the order of Hawkins as president of the Chatham Railroad Company, shall remain on deposit in the bank to the joint order of the parties mentioned in the contract "A," that is, Schepeler & Co., Baltzer & Taaks, Pickrell and Hawkins, for the purpose of providing for the payment of the iron. And Hawkins agrees to unite in drawing the orders therein provided for at the times and in the manner therein set forth. Provided, however, that when any order for delivery of bonds is required pursuant to said contract, Hawkins is to have the option to pay in money the sum payable under said contract for the iron, and upon such money payments being made, to withdraw from deposit the bonds which would otherwise have been paid under the contract "A," such option to be exercised within five days after being notified in the manner provided by the contract of the right of the parties of the first part (Schepeler & Co., and Baltzer & Taaks) to a delivery of bonds pursuant thereto.

The only *facts* set forth in the bill as grounds for asking the Court to reform the contract "A" by making it the contract of the defendant the Air Line Company instead of the contract of Pickrell, and for claiming an indebtedness of the Air Line Company under such contract of $93,615.57 are as follows:

[In stating the allegations of the bill, the arguments and conclusions of law of complainant's counsel, which constitute the greater part of them, are of course omitted.]

1. That the Air Line Company (formerly known as the Chatham Railroad Company), is a North Carolina corporation and was in 1868 owner of

an unfinished railroad extending from Raleigh southward, of which the defendant Hawkins was president.

2. That August 15, 1868, an act of North Carolina was passed authorizing the delivery of State bonds to the amount of two million dollars in exchange for bonds of the railroad company of like amount, to be secured by the execution of a mortgage to the State upon its property.

3. That in anticipation of the receipt of said State bonds in exchange for the company's bonds, the defendants Hawkins and Whitford visited New York prior to September 1, 1868, and through the defendant Pickrell sought to utilize the State bonds not yet issued in the purchase of 10,000 tons of iron. That Pickrell and Whitford proposed to purchase the iron of Schepeler & Co., that Schepeler & Co. applied for assistance to complainants and introduced to them as the agent of the company the defendant Pickrell; that Pickrell thereupon introduced Whitford to them, and that both Pickrell and Whitford were acknowledged by Hawkins to be the agents of the company. That they, with the knowledge of Hawkins, proposed to purchase 10,000 tons of iron to be paid for out of the proceeds of the State bonds, the bonds to be pledged meanwhile as security therefor. *That Pickrell and Whitford stated to complainant that the proposed contract might be made either in the name of the company or in the names of Pickrell and Whitford, or either of them, at the option of complainants; that the contract executed in either way, or in the name of either party, would be for the company* (Record, fol. 3).

That complainants and *Schepeler & Co.*, having agreed to furnish the company with said iron upon the security of the State bonds so to be issued, a

protocol of an agreement was drawn under the dictation of Pickrell and Whitford, preparatory to execution in that form, but which was not to be signed till reviewed by Hawkins, for which purpose delay was obtained by Pickrell and Whitford; *that Pickrell and Whitford stated* soon thereafter that they had submitted it to Hawkins, and that Hawkins requested, among other amendments, that the name of Whitford be stricken out as a party to the contract, and that the agreement be executed in the name of Pickrell alone, "*which he said would be as binding on said company as if signed by both Pickrell and Whitford or the company itself,*" whereupon the agreement so modified and amended was copied and signed "by the parties deemed material on the 11th September, 1868," and is Exhibit "A," above recited (Complaint, fols. 4, 5). That at the same time that Exhibit "A" was executed it was agreed that "another paper should be executed *by the said company* through its president, of even date with *and to form a part of Exhibit* "*A*," which paper is Exhibit "B" above recited (Complaint, fol. 5).

That these papers were signed in duplicate, one of which duplicates was retained by the company and the other delivered to complainants, no copy being delivered *to either Pickrell* or *Schepeler & Co.* "*who merely signed Exhibit 'A' as intermediators and negotiators between the parties*" (fol. 5).

The allegations of fact supposed to constitute a breach of the contract Exhibit "A" are as follows:

That when said agreement was made complainants had never seen the State bonds referred to in it, such bonds not having yet been issued; that Pickrell, Whitford and Hawkins assured complainants that they would be valid obligations of the State and that the interest would be at all times paid by the

State, and that before the company could get possession of the State bonds it was required to execute to the State and deliver to its treasurer its own bonds to an equal amount secured by a first mortgage on its property and which should operate in the hands of the State as an additional security for said State bonds (fols. 6, 7).

That as a matter of fact, on the 21st September, 1868, the company did deliver to the State Treasurer its bonds to the amount of two million dollars secured by a first mortgage, of which a copy is annexed to the complaint as Exhibit "C," but that the State bonds were not ready for delivery to the company in exchange until about November 11, 1868 (fol. 8). That complainants, relying upon the representations of Pickrell, Whitford and Hawkins, proceeded to make deliveries of iron under the contract Exhibit "A," and on the 12th October, 1868, delivered 630 tons to the company through Pickrell at the contract price of $50,023.31, which the company paid for in cash (fol. 7).

On the 2d November, 1868, complainants tendered the 2d, 3d and 4th deliveries of iron, amounting in the aggregate to about 2,014 tons at the contract price of about $167,097.73, and on the 21st November, 1868, the company paid therefor $73,483.10 in cash and delivered 150 State bonds to complainants *as security* for the balance due on said three deliveries, viz., $93,615.57 (fol. 9).

That before said bonds had been twenty days in possession of complainants they were publicly declared to be fraudulent and void as procured by corrupt legislation and issued in violation of the Constitution of North Carolina and were for these reasons excluded from the Stock Exchange, which at once rendered them worthless, whereupon complainant notified the company to take up the bonds and demanded payment of the said sum of $93,615.57 (fols. 9, 10).

That the company (fols. 9, 10) admitted the rights

of complainants to be paid said balance, and asked for indulgence as to time, giving assurances that by legislative action the bonds would be made valid securities, and kept complainants in suspense for a long time, until it became manifest that the company had not and was not likely to have any means for the fulfilling said agreement, Exhibit "A," when complainants released it from its further performance, being assured, however, that said balance would soon be paid by the company (fol. 10). The complaint then alleges that complainants waited until December, 1872, and then brought suit for the amount on the common law side of the United States Circuit Court for the Western District of North Carolina. That the company pleaded in defense that it was not a party to and was not bound by the agreement, Exhibit "A," because it was an agreement with Pickrell and not with it, and also the want of authority of either Hawkins, Pickrell or Whitford to bind it by the agreement (fol. 11).

That upon the trial in October, 1878, complainants offered to show that the contract, Exhibit "A," although signed by Pickrell was intended to be and was in fact the contract of the company and was made for its benefit. That this offer of proof was excluded because of the form of said written agreement, and complainants were allowed to withdraw a juror with leave to amend their complaint, "which can only be done effectively by an appeal to the equitable relief of this honorable Court, when your orators can be heard upon the real facts and merits of their rights in the premises whereby said contracts, Exhibits "A" and "B," may be reformed, &c." (fols. 12, 13, 14).

The complaint then sets forth a series of charges, which are remarkable for obscurity of expression but which, so far as they are intelligible, have no apparent bearing upon the supposed right of complainants to have the contract, Exhibit "A," re-

formed or enforced against the Air Line Company, or to make the company liable in any way for its breach.

I.—The first charge is (Clauses XXVIII., XXIX., XXX., XXXI.), that Pickrell, after entering into the contract, Exhibit "A," for the purchase of iron, proceeded, under the name of John F. Pickrell & Co., to make a construction contract with the Air Line Company for building a part of its road and furnishing rolling stock, &c., in which Hawkins, the president of the company, and Whitford, an agent of the company, were secretly interested as copartners. That the contract was a sham contract, made to cheat the company, and that out of it Hawkins and Whitford made profits exceeding $100,000, "which profits were enhanced by using in its performance the unpaid-for iron purchased of defendants" (fol. 15).

II.—The second charge is (Clause XXXII.), that in December, 1868, the Air Line Company, having in the hands of Pickrell nearly $400,000, directed him to transfer the amount to Whitford as agent of the company, which he did, and the amount was then invested by the company in United States bonds.

The complainants say that instead of doing that the Air Line Company ought to have appropriated the money to paying complainants the amount then due them under their iron contract with Pickrell, Exhibit "A" (fol. 16).

III.—The third charge is (Clause XXXIII.), that Hawkins and Whitford assured complainants in bad faith that the State bonds mentioned in the contract, Exhibit "A," were good and valid securities, "believing the same to be fraudulent and void and would soon prove to be so."

IV.—The fourth charge is (Clauses XXXIV., XXXV.), that the company returned to the State 1,850 of the repudiated bonds, receiving back the same number of its own bonds, and then instead of notifying complainants and giving them an opportunity to return the 150 repudiated bonds held by them, bought up 150 other repudiated State bonds and with them procured the return of the remaining 150 company's bonds (fol. 18).

V.—The fifth charge is (Clauses XXXVI., XXXVII., XXXVIII.), that the Air Line Company, after securing the return of its own bonds by the State bonds, put a mortgage upon its property in favor of the defendant the Raleigh & Gaston Company, a company managed by the same officers and directors, and that the latter company, "with Hawkins, Whitford and others," are receiving the income of the Air Line Company (fol. 19).

VI.—The sixth charge is (Clauses XXXIX., XL.), that the State bonds received by complainants under the iron contract, Exhibit A, have been adjudged to be unconstitutional and are therefore null and void and could not therefore constitute a valid payment, and besides, that as under the Act of August, 15, 1868, only 2,000 bonds of $1,000 each could be issued it was a fraud to specify in Exhibit B as the bonds which were to be used in carrying out the contract, Exhibit A, bonds of higher numbers than 2000, that such bonds were necessarily unauthorized by the act and were therefore invalid even if the act was constitutional, and that the 150 bonds received by complainants under the contract, Exhibit A, were of such higher numbers.

The relief prayed for by complainants upon all these various charges, so far as the prayers are intelligible, divide themselves into three branches.

First.

(*a.*) The reformation of the agreement, Exhibit "A," so as to make it the agreement of the Air Line Company.

(*b.*) An adjudication that $93,615.57, with interest from Sept. 11, 1868, is due from the Air Line Company to complainants under said agreement.

(*c.*) A judgment or decree against the company for said sum and a general execution to collect the same.

Second.

(*a.*) An adjudication that the benefit of the mortgage given by the Air Line Company to the State as indemnity and security to the State for the State bonds given to the company extended to complainants as holders of 150 State bonds, "and that neither said company nor the State nor the servants or agents of them had any right so to do or lawfully could exchange back said State bonds when the same were repudiated or at any other time to the exclusion of the rights of your orators to have and receive said company's bonds to the amount of 150 bonds of said company representing and held for said 150 State bonds."

(*b.*) That the Air Line Company and the Raleigh and Gaston Company be enjoined from encumbering the franchise, property, &c., of the Air Line Company to the exclusion of complainants' equities, and be made to account to complainants for the income of said company, to the extent of $93,615.57.

(*c.*) That a receiver of the Air Line Company be appointed.

Third.

That the defendants Hawkins and Whitford, who secretly constituted the firm of Pickrell & Co., be adjudged to account to complainants for all profits made by them to the extent of $93,615.57.

It will be observed that Schepeler & Co., who, with complainants, constitute the parties of the first part to the agreement Exhibit "A," are not made parties to the suit, and that no allegation is made that they ever parted with their interest in the contract or the bonds received under it, or that the complainants ever acquired it.

THE ANSWERS.

All the defendants answered excepting Pickrell, who, in complainants' interest, made default, turned over his papers to their attorneys, volunteered his testimony in their behalf and came twice from North Carolina to New York for the purpose of giving it before a commissioner.

The answer of the Air Line Company, at clauses XLV. to XLVIII. (fols. 59–62), sets forth the substance of the defense to such of the charges of the complaint as seek to obtain a reformation of contract "A" and its enforcement against the Air Line Company, based upon the idea that the complainants stand to the company in the relation of contractors.

"Further answering plaintiffs' said bill, this defendant says that it was authorized by its charter, which was granted by the Legislature of North Carolina in February, 1861, and various amendments thereto, to construct, equip and operate a railroad from the City of Raleigh to the South

Carolina State line. By an ordinance of the convention of 1868, of the people of North Carolina, the public treasurer was directed to deliver to it, upon certain terms in the said ordinance specified, one million two hundred thousand dollars of the bonds of the said State; and by the act of the Legislature hereinbefore referred to, ratified 15th day of August, 1868, the public treasurer was directed to deliver to it, as hereinbefore stated, the additional sum of two million dollars of State Bonds of said State, making in all, bonds of the said State of the par value of three million two hundred thousand dollars, issued to this company. With the proceeds of these bonds, it was the purpose of said company to construct its road between the termini above said. On the first day of September, 1868, the defendant, John F. Pickrell, for himself and associates, Greenleaf, Norris & Co., and Charles Gould, made a proposition in writing to construct and equip its said road between the points aforesaid, a copy of which is hereinbefore referred to, marked Exhibit E. This proposition was, on the 4th day of September, 1868, accepted by the company, but for the reasons hereinbefore stated in paragraph of this answer, this contract was afterwards modified, and on the 6th of March, 1869, a contract marked Exhibit D was executed by and between this defendant and the said John F. Pickrell & Co. After the said proposition of the said Pickrell and associates was made and accepted by this company as aforesaid, the said Pickrell and the plaintiffs and Schepeler & Co. entered into the contract in writing referred to in plaintiffs' complaint, and in this answer as Exhibit A, and dated 11th September, 1868, whereby the plaintiffs bound themselves to deliver to said Pickrell, ten thousand tons of iron rails on the terms and in the manner stated in said contract, and the said Pickrell bound himself to purchase of the plaintiff and the said Schepeler & Co., the said ten thousand tons of rails, to be paid

for at the price and on the terms in the said contract mentioned and set forth.

This defendant was not a party to the said contract, and in no way bound thereby, and had no knowledge or information concerning the same until after the making thereof by the said Pickrell and the plaintiff's and the said Schepeler & Co. The said Pickrell was not then the agent of the company defendant, and had no power or authority from it to make or enter into the said contract, or any other contract, with the plaintiff's or any other parties for the purchase of iron or anything else for or on behalf of this defendant. But this defendant is informed and believes that the said Pickrell made and entered into the said contract with the plaintiff's and Schepeler & Co. for himself, to enable him to fully execute his contract with this defendant as above said for building its road from Raleigh to the South Carolina line. That this defendant is informed and believes that when the said contract was made and entered into by the plaintiffs and Schepeler & Co., of the first part, and the said Pickrell, of the second part, the plaintiff's well knew that the said Pickrell was not the agent of this defendant in making said contract, and had no authority to contract for or bind it thereby, and that the plaintiffs well knew that the said Pickrell made and entered into the said contract for himself.

After the said contract, Exhibit "A," was signed and executed by said parties thereto, the defendant Hawkins was requested by the plaintiff and the said Pickrell to sign the paper filed with plaintiff's bill, marked Exhibit "B." This paper bears the date 11th September, 1868, but defendant was informed and believes that it was not signed on that day, nor until some time thereafter. The contract between this defendant and the said Pickrell for the construction and equipping of its road as aforesaid had been before that time entered into, by and between them, and the said Hawkins was in-

duced to sign the said writing, Exhibit "B" to enable said Pickrell to carry out his contract with the plaintiff and Schepeler & Co. by which said Pickrell expected to procure the iron with which to lay the track of the said road, and with no purpose or intent to become a party to the said contract himself, or to bind this defendant thereby. And this defendant avers that the said Hawkins has executed and performed every part of his said undertaking and agreement, and that neither the said Hawkins nor this defendant ever had any contract or agreement with the plaintiffs save and except that contained in said writing marked "B" as aforesaid."

The Air Line Company sets up as further defenses to the charges seeking the enforcement of Pickrell's Contract "A" against it as being its contract.

(*a.*) *Payment.* That Pickrell paid complainants in full for all iron delivered by them to him under their contract "A," and that the company paid Pickrell for all work done by him (including iron delivered) under his construction contract with the company.

(*b.*) *Want of equity.* That the matters complained of are matters which may be tried at law and with respect to which complainants are not entitled to any relief in equity (Clause LII., fol. 63).

(*c.*) *The Statute of Limitations* (Clauses LIII., LIV., fol. 63).

(*d.*) Discharge of State lien in manner provided by Act of August 15, 1868, under which State bonds were issued in exchange for company's bonds (Clauses XVII., XXXIV., XXXV., XXXVI., XXXVII., L., LI.).

The answers of Whitford and Hawkins substantially conform to the answer of the Air Line Company to the charges in question.

Hawkins in his answer also states the circum-

stances of, and the reasons for the execution by him of the contract "B" as follows (fol. 79, 80):

"After the execution of the said contract, Exhibit "A," this defendant was requested by the plaintiffs and the defendant Pickrell to execute the writing marked Exhibit "B," which he did. This paper is also dated September 11, 1868, but was not executed on that day, nor until some time thereafter. It was not part of the contract between the plaintiffs and Schepeler & Co. and Pickrell, marked Exhibit "A," but was a separate and independent contract on the part of this defendant to aid the said Pickrell in paying for the iron which he had contracted to purchase from plaintiffs and Schepeler & Co. The said Pickrell and the company defendant, as before stated, had already made the contract for constructing and equipping the said road by him, and for which he would be entitled to receive a large sum of money from said company, which was to be paid him in said State bonds, or from the proceeds of the sale thereof; and this defendant was advised that all payments in money or bonds, made directly to the said Pickrell, or indirectly for his benefit, would be in part satisfaction of what the said company would owe him upon the execution of his said contract with it.

"This defendant, for these reasons, signed the said writing, marked Exhibit "B," for the purposes therein contained, and not as forming any part of the said contract (Exhibit "A") between the said Pickrell and the plaintiffs and Schepeler & Co.; and so far as this defendant is informed and believes, the said two papers were not then regarded by any of the parties thereto as forming parts of the same contract, but as distinct contracts, each binding upon the party or parties signing the same, and upon him or them alone; and this defendant further avers that he has fully performed, executed and complied with every part of his said agreement, Exhibit 'B.'"

STATEMENT OF PROOFS.

The proofs in this case shows the following facts:

First.—The Chatham Railroad Company, now the Raleigh and Augusta Air Line Railroad Company, was duly chartered by the General Assembly of North Carolina, by Act of February 23, 1861, and was authorized to build its road, with Raleigh, N. C., or some point west of Raleigh not exceeding twelve miles, as one terminus, and the coal fields in Chatham County, N. C., as the other.

Second.—Said act was variously amended, in particulars not necessary to be stated, up to March 11, 1868.

Third.—On the 11th of March, 1868, the Convention of North Carolina, by ordinance, amended the charter of the Chatham Railroad Company and granted to it $1,200,000 of State bonds in aid of its construction, these bonds being covered by bonds of the company for a like amount deposited with the public treasurer, and secured also by a statutory lien in favor of the State and further by an express mortgage.

Fourth.—Up to the 15th day of August, 1868, the company had its roadbed partially graded and the $1,200,000 State bonds, and no other property, and it owed to the State $1,200,000, for which its whole property, present and prospective, and all its franchises, rights and powers, then belonging or appertaining, or which might thereafter belong or appertain to said company, were mortgaged to the State; and the mortgage contained a power of sale which authorized the Board of Internal Improvements to enter upon, take possession of and sell all of the

property, &c., in case the company should fail to pay the semi-annual interest on its bonds for twenty-four months after it became due, or should fail to pay the principal of its bonds for twelve months after their maturity.

Fifth.—On the 15th of August, 1868, the General Assembly of North Carolina, by act, ratified that day, authorized the public treasurer to issue State bonds to the amount of two million of dollars to aid in the construction of the Chatham Railroad, but only on condition that the company should make and deposit its bonds for a like amount, &c., with the public treasurer, and should make a mortgage on all the property, rights, franchises, &c., on that portion of the road to be built between the Western Railroad, near the old terminus, and the South Carolina line, and a statutory lien in favor of the State on the same property, rights, &c., was created by said act. It also provided that in case the company should fail to pay the semi-annual interest on its bonds for twenty-four months after it became due, or should fail to pay the principal for twelve months after maturity, the Board of Internal Improvements should be empowered to sell the property, rights, &c., &c.

Sixth.—On the 1st of September, 1868, the company had received the $1,200,000 convention bonds, and had the right to receive the $2,000,000 of bonds authorized by the Act of August 15, 1868, upon complying with the terms prescribed in the act; but the bonds had not then been issued and were not issued till some time afterwards, viz., 19th October, 1868.

Seventh.—In 1867 and 1868 (prior to August 15, 1868), Pickrell was a broker and a banker on Wall Street, in the City of New York, and was in good credit. He was rated as worth one-half a million of

dollars to one million of dollars (Pickrell, p. 244, Q. 32, 35, 36).

Eighth.—About 1867 or 1868, exact date not fixed, Pickrell was introduced to Whitford at the St. Nicholas Hotel, in New York, by a mutual acquaintance. Whitford was then President of the Atlantic and North Carolina Railroad Company, and was trying to issue some mortgage bonds on his road. Pickrell's aid was solicited for him in that behalf (Pickrell, p. 61, Q. 14). It seems from references in Exhibit "P," No. 1, Pickrell, p. 95, that Pickrell and Whitford did have dealings about his proposed mortgage bonds. A connection in business between them seems to have been then established.

Ninth.—The terms of the business connection between Pickrell and Whitford were that Whitford was to receive a commission or interest in the profits of all business that he should influence or carry to Pickrell. (See Whitford's answer, p. 47.)

Accordingly, Whitford wrote to his business associate, Pickrell, from Newbern, N. C., on the 13th of May, 1868, about business "which would give us control of these State bonds to a million or two," &c., &c. (Ex. "P," No. 1, p. 95). This was the Chatham Railroad business.

Tenth.—It further appears that prior to the 6th of July, 1868, Pickrell and Whitford had come to an understanding that they would make a proposition to the Chatham Railroad Company to contract for the building of its road, and to that end had caused the firm of Greenleaf, Norris & Co., and Charles Gould, of New York City, to agree to become interested with them in the business. (See Ex. "V. V," No. 1, with Van Vleet's dep., p. 152.) On the 8th day of July, 1868, Pickrell and Whitford, having agreed "that they will, under the firm name of John F. Pickrell take the contract for

building the Chatham Railroad," made a contract with Charles Gould, defining his interest in the said business, and also providing for certain interests to Greenleaf, Norris & Co. (Ex. "V, V," No. 2, p. 153.)

Accordingly, on the first day of September, 1868, John F. Pickrell (whose signature bound John D. Whitford as well as himself) proposed to do the entire work on the Chatham road, accepting State bonds therefor, "on behalf of himself and associates, viz.: Messrs. Greenleaf, Norris & Co., and Charles Gould, as follows," &c., &c. (See Ex. "P," No. 3, with Pickrell's N. Y. dep., p. 95.)

Eleventh.—This proposition was sent to W. J. Hawkins, President of the Chatham Railroad Company, was by him as such President accepted, subject to the approval of the Board of Directors of said company, and on the 4th day of September, 1868, was, by resolution of said board, approved. (See Resolution, Exs. "C, H, K, T," No. 1, p. 274.)

Thereafter Whitford and Pickrell assumed for the concern the name of John F. Pickrell & Co., and continued to act under it till the close of the contract in 1872. (See release from Pickrell & Co. to Chatham R.R. Co., March 14, 1872, p. 307.)

Twelfth.—Having made this contract, in the beginning of September, 1868, Pickrell and Whitford opened negotiations for the purchase of ten thousand tons of iron with Schepeler & Co., a house engaged in the iron trade in New York, the iron to be paid for out of the North Carolina State bonds, which the State was to issue in exchange for the company's bonds. Schepeler & Co. not having sufficient means for such a transaction and not being familiar with bond negotiations, asked Baltzer & Taaks to join them (Schepeler & Co.) in the business. They agreed to do so and then Schepeler

introduced Pickrell and Whitford to Baltzer & Taaks. (Baltzer's dep., p. 153, Q. 3.) Thus it was in the beginning of September the complainants and Pickrell first came together.

Thirteenth.—A draft agreement, "Exhibit P," No. 5, p. 96, called the "Projet," was the result of the interview between Baltzer & Taaks and Schepeler & Co. on the one side and Pickrell and Whitford on the other. The interview took place at the office of complainant's counsel and the agreement was made with his advice and concurrence, and was drafted by him. In the draft the names of Pickrell and Whitford both appear as parties of the second part. The draft was then taken by Pickrell and Whitford, they declaring that they had to send it to W. J. Hawkins, President of the Chatham Railroad Company. (Baltzer's dep., p. 154, Q. 5.)

Afterwards the paper was returned to Baltzer & Taaks with various modifications, as set out in Baltzer's deposition, pp. 155 and 156, Q. 6; one of such modifications being the dropping of Whitford's name as a party. The final agreement was then prepared by complainants' counsel and was formally executed and acknowledged, on the 24th of September, 1868, and is Exhibit "A" of the bill.

Fourteenth.—Afterwards another paper bearing the same date, September 11th, 1868, was executed by W. J. Hawkins, President of the Chatham Railroad Company (Exhibit "B" to the bill); it speaks for itself, and the two papers "A" and "B" show exactly and precisely the rights and duties of the several parties. "They do express in exact words the final agreement of the parties with reference to the matters embraced therein" (Baltzer, p. 167, cross-Q. 72), and "Dr. Hawkins, as President of the Chatham Railroad Company, and individually, fully complied with all of the requirements, stipulations

and agreements contained in Exhibit "B" (Baltzer, p. 167, cross-Q. 73), and never entered into any other contract about the matter except Exhibit "B" p. 167, cross-Q. 75).

Fifteenth.—The first delivery of iron was made to Pickrell under the contract about October 10th, 1868 (before the bonds were issued), and was paid for in cash by Pickrell (Accounts, Exhibit "B & T," Nos. 14 and 15, p. 187), and the sum of $11,794.27 was left to Pickrell's credit, as appears by the above accounts rendered to him by Baltzer & Taaks on that day. (See Baltzer's testimony, p. 160.)

Sixteenth.—The second, third and fourth deliveries of iron under the contract were made to Pickrell on the 2d of November, 1868 (Exhibit "B & T," Nos. 16, 17 and 18, pp. 187, 188, 189). They amount to $167,093.73, and they were paid for by Pickrell at the request of Baltzer & Taaks "in conformity with contract dated September 11, 1868" (Exhibit "B & T," Nos. 20 and 21, p. 190). These payments were made in check (cash) of Greenleaf, Norris & Co., $75,000 (Baltzer's dep., p. 174, cross-Q. 108, 111), and the balance say $92,098.73 by 150 North Carolina State bonds which Baltzer & Taaks reported to Pickrell on the 20th and 21st of November, 1868, to have been sold for his account and to have realized $93,490.42, which they "applied to payment of account of bills for second, third and fourth deliveries of iron," and to the credit of John F. Pickrell (Exhibit "B & T," Nos. 22 and 23, pp. 190, 191). Thus it will be seen that by these 150 bonds or their proceeds, Baltzer & Taaks were not only paid but more than paid the balance, which, in their complaint in this action, they claim to be still due for these deliveries under the Pickrell contract.

Baltzer testified that the bonds reported by his

firm to have been sold by them for Pickrell's account and to have been applied in payment for these deliveries, were not actually sold by his firm, but were accepted by them as payment for the balance due on these deliveries and were retained by his firm and are still in their possession with the exception of ten bonds *which, on the 19th of January*, 1869, *they sold to Pickrell for* $6,150 (pp. 174, 175, 176 and 196, Ex. "B. & T.," No. 35). Pickrell, on the other hand, testified that the sales reported were actually made and paid for the deliveries. (Pickrell, p. 249; Q. 59, 60.) So far as the question of payment of the claim in suit is concerned, it would seem to make no difference whether the bonds were sold by Baltzer & Taaks and the proceeds applied in payment of the balance due on the Pickrell contract, or the bonds themselves at a valuation equal to the alleged proceeds, were accepted by Baltzer & Taaks in payment of such balance. It will be remembered that under the contract, Exhibit "A," Pickrell had a right to pay in bonds at their market value on the day of payment and that, according to Baltzer, is the payment which he made, and the payment which complainants accepted, retained and used. And in the final account of the iron contract between themselves and Pickrell, *as set forth on their own books*, and brought down to September 6th, 1869, the bonds are treated as payment of the amounts stated in the notices of sale, and the account shows that after applying them as payment there remained a balance of $937.44 due to Pickrell by complainants which they paid him on the 28th of December, 1868, to square the account at that date. (See "Ex. B & T," No. 34, p. 195, and examination of Baltzer in respect to same, pp. 183, 184.)

Seventeenth.—In a short time after the second, third and fourth deliveries of the iron contract were

settled for by the payments of cash and State bonds above stated, the State bonds became discredited in the market from fear of hostile legislative action which embarrassed the railroad company and also embarrassed Pickrell. Afterwards Baltzer & Taaks tendered to *Pickrell* other deliveries of iron under the contract, Ex. "A," until February 20, 1869, when the last of these deliveries tendered, namely, the eighth, was by arrangement between complainants and Pickrell sold by complainants to other parties (Ex. "B & T," No. 23, p. 191, and testimony of Baltzer, pp. 176, 177).

Eighteenth.—On April 21, 1869, complainants wrote to *Pickrell* that they would make no further call or demand on *him* for receiving iron under the contract of September 11, 1868, Ex. "A" (Ex. "B & T," No. 25, p. 192), and, finally, under date of August 11, 1869, complainants *released Pickrell* from the obligations of the contract of September 11, 1868, Ex. "A," and considered the same closed (Ex. "B & T," No. 26, p. 192), and on the 26th August, 1868, united with Schepeler & Co. in an order on the Continental Bank for the remainder of the bonds deposited under the contract dated September 11, 1868, these bonds being released pursuant to the contract, the same having been mutually closed (Ex. "B & T," No. 33, pp. 193, 194). And shortly afterwards, on September 6, 1869, as above pointed out, they made up *their account with Pickrell* on their books (Ex. "B & T," No. 34), showing that the iron contract, Ex. "A," had been closed between them *and that there was nothing whatever due by him to them upon it.*

Nineteenth.—Notwithstanding the embarrassment in the affairs of the railroad company produced by the discrediting, in the Winter of 1868 and 1889, of the State bonds issued under the Act of August, 1868, the railroad company still had some means derived

from the sale of Convention and other bonds made by Greenleaf, Norris & Co., and the work of constructing the road continued to be prosecuted by Pickrell & Co. The original contract was, however, modified and largely reduced by the contract dated March 6, 1869, duly approved by the Board of Directors of the Chatham Railroad Company (Exhibit "P," No. 17, p. 108). Under the two contracts the Chatham Railroad was built from Raleigh to Haw River, a distance of thirty miles, and for it Pickrell & Co. received payment, as is evidenced by their receipts filed in this case (pp. 299–303). Every foot of iron laid on its road was paid for by the company to Pickrell & Co., in strict accordance with the terms of their contract, and Pickrell & Co. have released the company from all claims and demands on account of same and the company have released Pickrell & Co. (See Exhibit, p. 307, fol. 489.)

This is in substance the statement of facts of the defendants' case, and for its support they rely upon uncontradicted documentary evidence. Whatever testimony there is apparently in conflict with it will be found to be opinions and conclusions testified to by interested witnesses over the defendants' objection, not only unsupported by facts, but in conflict with facts established beyond the possibility of doubt by a long series of undisputed writings.

POINT FIRST.

The contract "A" on its face is not the contract of the Railroad Company, but is the contract of Pickrell. As it stands it is perfectly clear and intelligible. It cannot be treated as the contract of the Company, or made into the contract of the Company without becoming utterly unintelligible and irrational.

It was insisted by complainants in the Court below that the papers "A" and "B" are to be read and treated as a single instrument, that taken together they constitute the iron contract, and that because the undertakings in "B" of "William F. Hawkins, President of the Chatham Railroad Company," are apparently the undertakings of that company, *therefore* the undertakings in "A" of Pickrell are also the undertakings of that company, and enforceable as such without reforming "A," and even without extraneous testimony to show that "A" was understood and intended to be the contract of the company.

Does this result follow from making "A" and "B" operate as a single instrument? On the contrary is not such treatment absolutely fatal to the idea that in the understanding of the parties the undertakings of Pickrell in "A" are not his individual undertakings but the undertakings of the company? If in the instrument thus constituted for "Hawkins," we are to read "the Chatham Railroad Company," we cannot for "Pickrell" also read "the Chatham Railroad Company" without making hopeless nonsense of the entire document.

Let us see:

Treating the papers "A" and "B" as a single

instrument we have a tripartite agreement substantially as follows:

Schepeler & Co. and Baltzer & Taaks, parties of the first part, agree to sell and deliver to John F. Pickrell 10,000 tons of iron; Pickrell, the party of the second part, agrees to receive the iron and pay for it, and the Chatham Railroad Company, the party of the third part, agrees to unite with the other two parties in an order for withdrawing the bonds from the place of deposit.

This being the form of the contract, is there any rule of law or logic which would make either party responsible for any more than was stipulated in writing he should be responsible? Above all, is there any rule of law or logic which authorizes or permits the Court to read the contract so that the party of the second part is *not to do* what he expressly agrees to do, and the party of the third part *is to do* what he had not agreed to do, but what the party of the second part has agreed he would do. Where in the view taken of the contract by complainants would be the necessity, propriety or rationality of introducing the party of the second part at all?

The contract, as it stands, is precisely adapted to to the situation and relations of the respective parties as we claim them to have been.

The bonds were in the Continental Bank, the property of the Chatham Railroad Company, and subject to the order of Hawkins as President, but were dedicated by the company to the purposes of the construction contract of September 1, 1868, between the company and Pickrell and associates (Ex. "P," No. 3, p. 95), and were proposed by Pickrell, when received by him, to be dedicated to such extent as might be necessary to the purposes of his sub-contract for iron with Baltzer & Taaks and Schepeler & Co. Therefore, the object to be accomplished was to place the bonds in a situation to secure Pickrell & Co., so far as their construction con-

tract with the company was concerned, to secure Schepeler & Co. and Baltzer & Taaks, so far as Pickrell's sub-contract with them was concerned, and to secure the railroad company in not losing control of its bonds until an equivalent value in iron had been received from Pickrell under his construction contract. The agreement, therefore, provided that the bonds should only be withdrawn by the concurrence of the three parties interested in them.

1. The owner, the Chatham Railroad Company.
2. Its contractors for construction, Pickrell & Co.
3. Pickrell's sub-contractors for iron, Schepeler & Co. and Baltzer & Taaks.

The papers "A" and "B" show conclusively upon their face that the parties did not deal loosely about this important business, that they left nothing to understanding and intention, but by writing exactly defined and jealously guarded their respective rights and interests.

Each party had his lawyer.

Regarding Pickrell as principal in the purchase of iron from the complainants and Schepeler & Co. the instruments are perfectly lucid and precisely adapted to the situation.

Regarding Pickrell as agent for the Chatham Railroad Company in the purchase of iron, they become mere nonsense.

If as claimed by complainants "John F. Pickrell," the party of the second part to "A," means the Chatham Railroad Company, that company was bound and protected by the requirement in "A" of his assent to the withdrawal of bonds, and there was clearly no necessity or propriety for "B." Its preparation and execution by the company through another agent, its president, is simply absurd and irrational. The provisions in the 3d clause of "A," requiring the assent of Hawkins to the withdrawal of the bonds, are also absurd and irrational. Again, if "John F. Pickrell" in "A" means the railroad company, or John F. Pickrell agent of the railroad

company, why do the careful and able lawyers who prepared that instrument make provision in it for the event of his death and the protection of the interest of his "*personal representatives*"? (fol. 30, 31).

Let us read the latter part of the third clause of "A" as complainants say it should be read, or should be reformed to read, the change being indicated by italics.

"Notice is required to be given to *The Chatham Railroad Company*, or his personal representatives, of the arrival of any ship containing iron, and he or they are to be ready to receive the same whenever ship is ready to discharge. In the event of the death of the said *Chatham Railroad Company* and no appointment of personal representatives, such notice may be given to the said William J. Hawkins by letter addressed to him at the City of New York. If at any time *the Chatham Railroad Company*, or his personal representatives, or the said William J. Hawkins, or his attorney, or the survivor of them, shall refuse to join in drawing an order for the amount due for iron as aforesaid, the parties of the first part may retain the warehouse receipt, etc., and may sell the iron, etc., after five days' notice of intention to sell, etc., for and on account of *the Chatham Railroad Company*, or his personal representatives, etc., such notice of intention to sell to be given by depositing in the general Post Office in the City of New York, addressed to *the Chatham Railroad Company*, or his personal representatives, or the said William J. Hawkins in the event of the death of *the Chatham Railroad Company*, and the non-appointment of any personal representatives at the City of New York."

POINT SECOND.

These considerations are of themselves fatal to the reformation sought. A Court of equity will not on any testimony reform portions of a contract as to which mistake is alleged when the effect of the desired reformation is necessarily to create a conflict with other portions as to which no mistake is pretended or to render such portions nugatory and absurd.

It has been truly said that one who alleges that he understood that a note payable on demand or in a year from date was to be renewed indefinitely or delivered up unpaid at the death of the promisee ought not to be believed *on any amount of testimony.*

Leading Cases in Equity, Vol. 2, Part 1, 4th Am. Ed., n., p. 987. Woolam *vs.* Hearn.
Wheaton *vs.* Wheaton, 9 Conn., 96.

Baltzer, one of the complainants, testified that both the agreement "A" and the original draft of it (Ex. "P," No. 5, pp. 96–99) were prepared by his counsel after full discussion and deliberation.

Baltzer, Q. 4, 5; Cross Q. 61, 62, 69.

A considerable period intervened between the preparation of the draft and the final agreement. In both draft and final agreement Pickrell was made the contracting party for the purchase of the iron. Both draft and final agreement contain undisputed provisions like those to which attention has been called which are absolutely irreconcilable with the idea that the intent of the parties was that Pickrell's relation to the contract was that of agent and not

that of principal, or that the principal was the Chatham Railroad Company, and which become unintelligible and preposterous if the Chatham Railroad Company is made the contracting party. There is not a particle of evidence that the draftsman did not draw precisely the instrument he was instructed to draw, much less that he was instructed to draw a contract with the Chatham Railroad Company and by mistake drew a contract with Pickrell. The agreement "A" was formally and solemnly executed and acknowledged by Pickrell as his individual act and deed. In all their dealings under it from the beginning to the end complainants treated the agreement as Pickrell's individual contract.

The pretence that "A" was intended by the parties to be the contract of the Chatham Railroad Company was made for the first time on the filing of this bill on the 18th day of October, 1878, more than ten years after the contract was executed.

And the complainant Baltzer, upon cross-examination, was at last compelled to say that his counsel, the draftsman of the instrument, did not violate but fulfilled precisely the intent of the parties, and that Exhibits "A" and "B" "*express in exact words the final agreement of the parties with reference to the matters embraced therein*" (p. 167).

See his cross-examination: Cross Q. 59; Cross Q. 75, pp. 164–167.

Is it necessary to go any further?

How, in the face of this admission and of the conceded facts to which attention is called, can complainants be now heard to say or argue that "A" was intended or understood by the parties to be the contract of the company and not that of Pickrell? Is it not true that he who alleges such intent or understanding "ought not to be believed *on any amount of testimony*"?

POINT THIRD.

What complainants and Pickrell intended to be embraced in their written contract "A," having as matter of fact been embraced therein, proof of an oral collateral understanding between them that the writing should have a meaning and effect differing from and in conflict with that appearing by its terms, was inadmissible and ineffectual to override them.

This is all that the allegations of the bill and the proofs in support of it amount to. Baltzer and Pickrell both testify that their contract "A" expressed precisely what they intended it to express, but swear, over defendant's objection to the competency of the testimony, not to any facts but to their respective "*understandings*" that the covenants of Pickrell should operate as covenants of the Chatham Railroad Company, and should in other respects operate otherwise than they are expressed. (Pickrell, Q. 57, 58, 59, 66, 67, 68, 76, 77, 83, 84, 87, pages 68–75; Baltzer, p. 167, Cross Q. 74.)

A Court of equity will never interfere with a contract in writing unless it is shown in the clearest and most satisfactory manner, by proper allegations and proofs, that the alteration sought to be made in such contract was a substantive part of it and intended to be inserted in it, but was omitted from it through mistake, accident or fraud.

This is elementary law.

Story's Eq. Jur., § 152 *et seq.*
Adams' Eq., 168 *et seq.*, 7th Am. Ed.
Leading Cases in Equity, "Woolam *vs.* Hearn," 4th Am. Ed., p. 979 *et seq.*
Hunt *vs.* Rousmaniere's Admrs., 1 Peters, Supr. Ct., 1.
Forsythe *vs.* Kimball, 91 U. S., 291.
Walden *vs.* Skinner, 101 U. S., 577.

"*The proper question is not what the document was intended to mean or how it was intended to operate, but what it was intended to be.*"

Adams' Equity, p. 170.

"The rule of evidence is generally the same in both Courts. In equity there is the advantage of the defendant's answer; but if that fails to confess or to open the case, and it is to be made out entirely by proof, *the terms of an agreement in writing can no more be varied here than at law, unless it appear by clear proof that the provision sought to be established was a substantive part of the contract, and intended to be inserted in the instrument itself, but was not through fraud and mistake.*"

Per Ruffin, *C. J.*, Howell *vs.* Hooks, 2 Dev. Eq., 259.

And see also

Geddy *vs.* Stainback, 1 D. & B., Eq., 475.

Parker *vs.* Vick, 2 D. & B. Eq., 195.

And such mistake must be established by the clearest and most convincing proof.

Fowler *vs.* Fowler, 4 DeG. & J., 250, 265.

Walden *vs.* Skinner, 101 U. S., 577.

"So clear and convincing as to leave no room for doubt."

Mead *vs.* Ins. Co., 64 N. Y., 453.

"As much to the satisfaction of the Court as if admitted."

Ford *vs.* Joyce, 78 N. Y., 618.

"Relief cannot be granted where the evidence is loose, equivocal or contradictory."

1 Story Eq., §§ 152, 157.

Miaghan *vs.* Ins. Co., 19 N. Y., S. C., 321, 323.

POINT FOURTH.

There is not a particle of proof that the Railroad Company ever authorized Pickrell to bind it by the contract "A" or by any contract whatever. In the absence of such authority the Railroad Company is not bound by the contract no matter what the "understanding" of complainants and Pickrell may have been.

The only shred of evidence of any sort of authority to Pickrell to act in any manner for the Chatham Railroad Company is that in December, 1868, long after the contract "A" was made, he had under his control with Greenleaf, Norris & Co., funds of the railroad company to a large amount, derived from the sale of State bonds, and that Hawkins, the president of the company, directed him to turn over these funds to John D. Whitford, agent, which was done, and the amount forthwith drawn by Whitford from Greenleaf, Norris & Co.

Pickrell, Q. 134–143, pp. 81–83.
Van Vliet, Q. 5., pp. 146, 147.

The fact that Pickrell was custodian of some funds of the railroad company in December, 1868, is not of course any evidence whatever of power to make a contract for 10,000 tons of iron for the company in September, 1868.

It is evident, also, that Pickrell's alleged statement to complainants, sworn to by Baltzer, at the time the contract "A" was made, that he was acting as agent in the purchase of the iron for the company, would not afford the slightest evidence of authority

to make the contract. But he expressly swears that he did not make the statement.

Pickrell, Q. 58 p. 69.

And he also swears that he had no authority to make any contract binding on the company (Q. 9, p. 239).

The company in its answer swears it gave him no authority.

Clause XLV., fol. 61.

Hawkins, merely by virtue of his office as president, could not give him authority to bind the company by the contract.

But he swears in his answer that he gave him none, and there is no proof that he gave him any. (Hawkins' answer, p. 50, fol. 78., and Whitford's answer, p. 45, fol. 70).

If Pickrell had authority to bind the company by the contract, surely something of the kind would appear by some of the numerous letters, telegrams and accounts relating to the contract and its performance put in as exhibits in the cause. Yet none of them show or indicate anything of the kind, but on the contrary, like the contract itself, they are fatal to the idea either that Pickrell had authority or supposed he had authority to make the contract, or that either he or complainants intended to bind the company by the contract.

But complainants said in their argument below that even though Pickrell had no express authority to act as agent for the company in making the contract, yet the company took benefit from his act and thereby ratified his agency.

Now, this is a loose statement.

What act of Pickrell did the company take the benefit of and thereby ratify his agency?

The complainants said in their argument below, "It will be further observed that the company actually received and now uses the iron delivered on the contract by complainants; and that they paid all that has been paid on account thereof."

Yes, the company did receive and use the iron delivered upon the contract, but they received and used it not on the iron contract of complainants and Schepeler & Co. with Pickrell, but on the construction contract made by Pickrell & Co. with the company defendant. And the company defendant never paid complainants one cent for the iron, but they furnished according to their contract with Pickrell & Co. the means and bonds to Pickrell whereby Pickrell paid complainants.

This the company defendant did and nothing else in that behalf.

POINT FIFTH.

But there was no "understanding" between complainants and Pickrell that the contract "A" should bind the Railroad Company. The allegation of such an "understanding" is a mere pretence made for the purposes of this suit not established by any proofs, and demonstrated to be false by overwhelming testimony.

I.—By the contract itself. Because it was made by intelligent men, experienced in business, after long deliberation, with full information and ample opportunity for investigation about a matter of importance in the regular business of complainants. Because they were assisted in its consideration and the preparation of both draft and final agreement by their legal advisers. Because in the matters complained of draft and final agreement correspond. Because the alleged "*understanding*" is absolutely inconsistent with and in conflict with the undisputed provisions of "A" and "B," which as complainant Baltzer swears, "express in exact words the final agreement of the parties with reference to the matters embraced therein." It is simply impossible that rational people could have prepared and executed "A" and "B" if the alleged "*understanding*" existed.

II.—Because even if complainants had had the choice they would naturally have preferred to sell on the credit of Pickrell rather than on the credit of the railroad company. Pickrell was the social and business acquaintance of complainants (pp. 135, 247), was doing business in New York, in good financial credit, and worth from a half

million to a million dollars. On the other hand the railroad company, as complainants well knew, was mortgaged to the State and had no available means except the State bonds, dedicated to the purposes of the construction contract with Pickrell and his associates (Ex. "P," No. 3, p. 95).

Pickrell, x-Q. 266, p. 138.
x-Q. 31–36, pp. 244, 245.

III.—The conduct of complainants and Pickrell during the time the contract was being performed shows in the clearest possible manner their "*understanding*" of who was bound to them thereby. Their conduct is consistent only with the idea that the contract was intended to be precisely what it is expressed to be, and is fatally in conflict with the pretence now put forward. Every bill, every receipt and every letter demonstrates the falsity of the pretence.

Bills for first, second, third, and fourth deliveries of iron stated to be "on contract dated Sept. 11, 1868," are all made out to *John F. Pickrell.*

Ex. "B & T," Nos. 13–18, pp. 186–189.
Ex. "P," Nos. 8–11, pp. 104–106.

The bills for second, third, and fourth deliveries are enclosed in a letter from complainants and Schepeler & Co. addressed *to Pickrell*, and are stated to be for iron "which we are prepared and wish to deliver *to you*. We ask *you*, therefore, to make *your* arrangements *in conformity with contract* dated 11 Sept. last, and advise us accordingly" (Ex. "B & T," No. 20, p. 190).

On the same day they write to *W. J. Hawkins, the president of the Air Line Company*, and say: "We have to-day informed *Mr. John F. Pickrell* that upon contract dated September 11 last, we wish to deliver *to him* . . . iron

amounting to $167,098.73, bills of which have been placed in *his* possession, and we now ask you to have the necessary arrangements for payment of the above sum attended to." This is Ex. "B & T," No. 21, p. 190. And again, having received $75,000 cash on the above bill, they write to *Pickrell* on the 20th November, 1868, and advise *him* that they have sold 100 North Carolina bonds, producing $62,493.60, "which we apply to payment of account of bill for second, third, and fourth deliveries of iron. *You* will oblige us by settling balance at an early day" (Ex. "B & T," No. 22, p. 190). Again, on the 21st November, 1868, they write to *Pickrell* advising him that they have sold "to-day" 50 North Carolina State bonds, producing to *your* credit $30,966.82 (Ex. "B & T," No. 22, p. 190). And after the bonds of the State were discredited, the iron contract was suspended, or rather revoked, by complainants' writing to *Pickrell*, under date of April 21, 1869, that they will make no further call on *him* for receiving iron under the contract of 11th September, 1868 (Ex. "B & T," No. 25, p. 192). And, finally, to close the whole matter, they wrote to *him* on the 11th August, 1869, as follows:

"NEW YORK, August 11, 1869.

J. F. PICKRELL, Esq., New York.

DEAR Sir: In reply to *your* note of this day we beg to say, that in accordance with *your* letter addressed to us on the 2nd of March last, as far as we are concerned we release *you* from obligation of receiving any more iron under contract dated 11th September, 1868, *and consider the same as closed.*

We are, sir,
Respectfully yours,
BALTZER & TAAKS."

Ex. "B & T," No. 26, p. 192.

And then, on the 26th August, 1869, complainants and Schepeler & Co. give to *Pickrell*

an order on the Continental National Bank for "850 Chatham bonds, being remainder of those deposited there for security of iron contract dated September 11, 1868" (Ex. "B & T," No. 33, p. 193). And the correspondence between the parties with reference to the iron contract is concluded by the following letter:

"OFFICE of JOHN F. PICKRELL,
42 Broadway, P. O. Box, 5696.
NEW YORK, August 21st, 1869.

DEAR SIR: Yours of 26th inst. with order for 850 North Carolina bonds, received and noted. *This closes finally my contract of 11th September, 1868, with yourselves and Messrs. Schepeler & Co.*

Yours truly,
JOHN F. PICKRELL."

"Messrs. Baltzer & Taaks,
50 Exchange Place."

Ex. "B & T," No. 32, p. 193.

And lastly, in the beginning of September, 1869, complainants close the iron account with Pickrell on their books, in which *he* is *individually* charged with the various deliveries and expenses and credited with the various payments in cash and bonds or their proceeds, and by which it appears *that complainants are paid in full.*

Ex. "B & T," No. 34, p. 195.
Testimony of Baltzer, Q. 158, 159, 163, pp. 183, 184, 185.

The complainants produced No. 34 as being a true copy of the account as it appeared on their books, but, under the advice of their counsel, persistently refused to produce the books themselves (pp. 169–173). It is to be presumed, therefore, that the books, if produced, would have afforded additional evidence destructive of their claim. But the evidence in the record is quite sufficient to demonstrate that the claim is a false pretence and afterthought.

POINT SIXTH.

The complainants were paid for their iron in full by Pickrell in money and in bonds or their proceeds. There is nothing whatever due them under the contract "A."

The complainants admit that they were paid for the first delivery (Complaint, p. 5, clause XVI.). The only claim they make is that there is a balance due on the second, third and fourth deliveries of the 2d November, 1868, amounting at the contract price to $167,097.73. In payment of those they admit they received in cash $73,483.10 and 150 State bonds of the par value of $150,000. The pretence is that the bonds were received as security and not in payment, and that when twenty days after their receipt the bonds became discredited, complainants offered to return the security and demanded payment (Complaint, clauses XIX.–XXII., pp. 5, 6, 7).

This pretence is shown to be false :

I.—By the contract itself which gave Pickrell the right to pay in money or in bonds, at their market value. The presumption therefore is that bonds having been taken were taken in payment.

Contract A, clause III., p. 19.

II.—By the letter of complainant to Pickrell of November 20, 1868, by which 100 of the bonds are credited in account with him at $62,493.40 *as having been sold at that price*, and their letter of November 21, 1868, by which the remaining 50 are credited in account with him at $30,996.82, *as having been sold at that price.*

Exhibit "B & T," 22, 23, pp. 190, 191.

III.—By Baltzer's own testimony that these letters "give statements showing the amounts, prices at which these 150 bonds *were taken by us to account* with the consent of all the parties as required by the contract."

Baltzer, Q. 19, p. 157; Q. 149, p. 180.
Pickrell, Q. 99, p. 76.

IV.—By complainants' own final balance sheet with Pickrell of September, 1869, in which the bonds are credited at above prices, and complainants are shown to have been paid in full.

Exhibit "B & T," No. 34, p. 195.

V.—By the fact that the complainants treated the bonds as their own property—as payment and not as security—and on the 19th January, 1869, resold ten of them to Pickrell at a different price from that at which they had received them.

Exhibit "B & T," No. 35, p. 196.
Baltzer, Q. 161, p. 184.

VI.—By the testimony of Pickrell, their own witness, that complainants were paid for all the iron received under his contract with them.

Pickrell, p. 249, Q. 59, 60, and p. 253.

Pickrell testifies that the bonds were not merely credited in account but actually sold by complainants for the amounts stated in their letters (Exhibits "B & T," 22 and 23), and those proceeds applied in payment of the iron, such proceeds being sufficient to discharge the entire balance due.

See final account, Exhibit "B & T," No. 34, and Pickrell's testimony, p. 253, as follows:

Recross-examination:

Q. 85. The Chatham Railroad Company received the iron from Baltzer & Taaks under *your* contract with Baltzer & Taaks, dated September 11, 1868; is this so or not?

A. Yes.

Q. 86. Baltzer & Taaks through you received the bonds belonging to the Chatham Railway Company, and sold enough of said bonds *to pay for all of said iron;* is that so or not?

A. Yes.

Q. 87. The iron then having been delivered and having been paid for, why is the account not settled and balanced?

A. I don't know.

VII.—The complainants have never offered to deliver up the bonds—Baltzer said (fol. 255) when his deposition was taken that he then had them all in his possession, excepting the ten resold to Pickrell—namely 140 bonds. No offer to deliver these up was then made—none is made in the bill. There is no proof of any offer made before filing the bill to deliver them up to the Railroad Company. The company denies in its answer that any offer was ever made to it or demand made upon it (Answer, clause XXII., fol. 51).

POINT SEVENTH.

If it be the fact, as shown by complainants' notices of sale and as testified to by Pickrell, that the bonds received by complainants were sold by them and the proceeds were applied in payment and discharge of amount due complainants, it is quite immaterial with respect to the question of payment whether the bonds were or were not subsequently repudiated by the State of North Carolina, or held unconstitutional by its Courts.

POINT EIGHTH.

If, on the other hand, it be the fact, as testified to by complainant Baltzer, that the bonds were accepted by complainants as payment at the amounts at which they are stated in their notices of sale to have been sold, the alleged subsequent repudiation of them by the State of North Carolina or the alleged decision of its Courts that they are unconstitutional are equally immaterial.

The agreement being that the iron should be paid for by certain specific bonds of the State of North Carolina bearing certain numbers, and then on deposit in the Continental Bank, and the complainants

having accepted such bonds in payment, they took and held them at their own risk.

Lamert *vs.* Heath, 15 M. & W., 486.
Wise *vs.* Chase, 44 N.Y., 337 ; reversing 3 Robt., 35.
Otis *vs.* Cullum, 92 U. S., 447.

In *Wise* vs. *Chase* it was held that a vendee who, upon a purchase of goods, agrees to deliver to the vendor vouchers of a public officer to the amount thereof, and in pursance of such agreement delivers the vouchers, has fully performed his part of the contract and discharged himself from liability thereon. And that the fact that the vouchers are not paid by the government creates no cause of action against the purchaser.

The Court of Appeals say, by HUNT, *Justice :*

"It is simply an agreement to purchase the goods and to pay for them in the obligations or certificates or warrants of another party. This is a valid contract, binding on the seller who enters into it, and imposing no personal liability on the buyer further than to deliver the stipulated obligations of the third party. These the seller takes and holds at his own risk. If they do not produce the full amount expected, it is the loss of the seller and not the buyer." . . . . "*Suppose the agreement on the part of the defendants had been to deliver the bonds of the State of Kansas or of the United States to the amount of the goods, would there have been a pretence that the defendants would be liable for their ultimate payment?* Yet the genuine voucher of Governor Robinson's quartermaster, free from fraud in the manner of its being obtained, is in law and in fact as complete an obligation against these governments (whichever he represented) as their formal bond. He and his quartermaster were the recognized agents of the Government to receive the

military stores needed by them, and to issue certificates of indebtedness to the parties furnishing them. True, there is no mode of compelling payment, if the Government refuse to make it or insist upon a deduction; nor is there in any case where the government gives its direct obligation. It is a simple transaction of faith and confidence between the Government and its citizens."

In *Otis* vs. *Cullum* the question was whether a recovery could be had against a bank, which had sold certain bonds of the City of Topeka, subsequently held to be void as having been issued under an unconstitutional act of the Legislature. The facts were these:

The First National Bank of Topeka, Kansas, placed upon the market and disposed of certain bonds of the City of Topeka which had been issued under two acts of the Legislature of Kansas. In a suit upon defaulted coupons it was held that the Legislature had no constitutional power to pass these acts, and that the Topeka City bonds were, therefore, void.

Loan Ass'n *vs.* Topeka, 20 Wall., 655.

The plaintiffs in *Otis* vs. *Cullum*, *supra*, thereupon brought suit, on the ground of failure of consideration, to recover from the bank the amount paid for the bonds which they had purchased from the bank.

Mr. Justice Swayne, in delivering the opinion of the court, said:

" . . . The plaintiffs got exactly what they intended to buy and did buy. They took no guaranty; they are seeking to recover, as it were, upon one, while none exists. They are not clothed with the rights which such a stipulation would have given them. Not having taken it, they cannot have the benefit of it. The bank cannot be charged with a liability which it did not assume.

"Such securities throng the channels of commerce, which they are made to seek, and where they find their market. They pass from hand to hand like bank notes. The seller is liable *ex-delicto* for bad faith; and *ex-contractu* there is an implied warranty on his part that they belong to him, and that they are not forgeries. Where there is no express stipulation, there is no liability beyond this. If the buyer desires special protection he must take a guaranty. He can dictate its terms and refuse to buy unless it be given. If not taken, he cannot occupy the vantage ground upon which it would have placed him. It would be unreasonably harsh to hold all those through whose hands such instruments may have passed, liable, according to the principles which the plaintiffs in error insist shall be applied in this case."

The present case is stronger than the cases cited. In the present case the purchaser, Pickrell, not only delivered to complainants precisely what he agreed to deliver in payment, but the complainants accepted such delivery as payment, and nearly a year later, and long after the date of the alleged repudiation, balanced the account on their own books as one that had been fully satisfied and discharged by the bonds delivered in payment.

Exhibit "B & T," No. 34, p. 195.

POINT NINTH.

There is no proof that the bonds in question were ever repudiated by the State of North Carolina or held unconstitutional by its Courts.

The allegation in that regard made in clause XXI. of the complaint, p. 6, is denied in clause XXI. of the answer of the company, p. 32.

The Act of North Carolina of the 18th December, 1868, relied upon by complainant does not repudiate the issue of bonds in question, but on the contrary is declared to be *for the purpose of placing their validity beyond question*, and provides that upon their surrender other State bonds may be issued to the company in lieu thereof upon certain terms and conditions.

The bonds in question are also recognized as outstanding obligations of the State by later legislation, to which attention will be called. (See Appendix to these points, in which the Acts bearing upon this subject are contained.)

The Act of the 18th December, 1868, was decided to be unconstitutional by the majority of the Court in *Galloway* vs. *The Chatham R.R. Co.*, 63 *N. C.*, 147, but the previous Act of August, 1868, was not decided to be unconstitutional in that case or in the later case of the *University R.R. Co.* vs. *Holden*, 63 *N. C.*, 410, as assumed by complainants in their argument in the Court below. The question of its constitutionality was not before the Court in either of these cases, and has never been adjudicated by the Court in any case. It may be that a strong argument, adverse to the constitutionality of the act in question, may be made based upon the prevailing opinions in the above cases, but that does not affect the force of our statement that *as yet* the bonds have not either been repudiated or held unconstitutional. *Non constat* that they ever will be.

POINT TENTH.

The iron contract "A" not having been authorized by the railroad company, and being, moreover, in the intent of the parties and in truth and in fact as well as in form, the contract of Pickrell, and not that of the railroad company, the complainants are not entitled to any relief whatever against the railroad company.

POINT ELEVENTH.

Complainants having been paid in full by Pickrell for everything due them under the iron contract "A" and the contract having been closed by the mutual assent of themselves, Schepeler & Co. and Pickrell, complainants are not entitled to relief against any of the defendants.

POINT TWELFTH.

Complainants are not entitled to relief against the railroad company, Hawkins or Whitford, on the alleged ground that Hawkins, the president of the company, was interested in the construction contract of Pickrell & Co. to build the railroad and that the construction contract was not a bona-fide contract.

They charge in their bill (clauses XXIX., XXX., XXXI., fols. 14, 15) that the construction contract was not a *bona-fide* contract; that the firm of Pickrell

& Co. did no work on the railroad; never had any correspondence with the engineer in charge of the work or any one connected therewith; had no accounts with the company, and that the so-called firm of Pickrell & Co. was merely a combination between Pickrell, Whitford and Hawkins to cheat the railroad company at one end of the line and at the other end to cheat complainants by Pickrell paying worthless State bonds for the iron delivered under his contract with them, and that the combination resulted in more than one hundred thousand dollars profit to Hawkins and Whitford.

Now, if this charge were all true, it is quite impossible to perceive how it would entitle the complainants to any relief against the railroad company defendant. It is a new idea that a sub-contractor for iron furnished to a contractor with a railroad for its construction is entitled to recover the price of the iron from the railroad company because the president of the company turns out to be secretly interested in the construction contract.

And it is also a new idea that the sub-contractor is under such circumstances entitled to have an account of the profits ı e construction contract (Complaint, fol. 26).

But the charges are not true. There is no proof that Hawkins was interested in the construction contract. He swears he was not (Hawkins' Answer, fol. 82), and there is no evidence to the contrary. Nor is there any proof that the construction contract was not a *bona-fide* contract, made and carried out in good faith by Pickrell and Whitford, under the firm-name of Pickrell & Co., Greenleaf, Norris & Co. and Charles Gould having certain subordinate interests therein, as already pointed out. The charges in question are merely assertions flatly contradicted by the evidence.

Taking the statement of complainants' witness Pickrell to be true, under the arrangement between

himself and Whitford, he was to have one-third of the profits and Whitford the other two-thirds. Now, what was Pickrell to do to earn his part of the profits arising from the contract? He answers this in his deposition, p. 126, Q. 207: "All that I undertook to do, as we agreed upon, was to furnish the money, and that was to be done in New York." What was Whitford to do to earn his portion of the profits? He was to supervise the work for the contractors, while Hawkins was, of course, to supervise the work for the company. See Pickrell, p. 67, Q. 49: "Who, if any one, was to supervise the work on the said road under your proposal? A. Dr. Hawkins and John D. Whitford."

Now it is certain that that thirty miles of the Chatham Railroad were built by somebody under the construction contracts with Pickrell & Co., and it is equally certain that Pickrell & Co. received large sums of money, at various times, for said work, the whole amounting to $611,000, and receipts for sums received are filed as exhibits in this cause, signed by Pickrell (pp. 229–303). So there must have been estimates, even though Mr. Pickrell says he never saw them. The work was done by instructions of Pickrell & Co. and the accounts with the contractors, Pickrell & Co., duly kept on the company's books. Vass was a witness for complainants. He is and for years has been secretary and treasurer of the company defendant. He was asked as follows by complainants (Q. 54, p. 208):

"I now ask you to state, as secretary and treasurer of the Chatham Railroad Company, during the time of the construction of its road, or at any other time, if there ever was a construction account on the books of said company in the name of John F. Pickrell & Co., as contractors upon the road of said company, at any time or in any manner; and if yea, will you please produce said account as part of your answer?

A. The account of J. F. Pickrell & Co., as contractors was raised upon the books of the Chatham Railroad Company and was regularly kept until closed, as the same appears upon the books of the company ; I cannot produce it, as the books are not under my control."

And again Vass swears, p. 220, Q. 98, that Pickrell & Co., through their agents and sub-contractors, did build and equip the Chatham Railroad to a point near Haw River, &c., as shown by the interrogatory.

But why pursue this matter further? Pickrell says in his Raleigh dep., p. 247, Q. 49 : "Were you not the contractor for building the Chatham Railroad, and did you not hold yourself out as such and did you not receive pay as such, from September, 1868, down to and as late as August, 1871 ? A. Yes."

And see his testimony, cross-Q. 258–269, pp. 136–139.

POINT THIRTEENTH.

Complainants' claim is barred by the Statute of Limitations, which is interposed by all the answering defendants as a defense to this action.

(Clause LIII., Answer of Air Line Co., p. 41; Answer of Raleigh & Gaston Co., p. 42; Answer of Whitford, p. 48; Answer of Hawkins, p. 54.)

It is alleged in clauses XX. and XLII. of the bill that on the 2d day of November, A.D. 1868, the defendant company became indebted to the complainants in the sum of $93,615.15; that this sum of money was then due and owing from the defendant company to complainants. At that time the complainants' cause of action accrued.

This suit was brought on the 18th day of October, A.D. 1878. More than three years—nearly ten years—elapsed after the alleged cause of action accrued to the complainants before this suit was brought.

The statute of North Carolina barring such demands as that specified in the bill is three years next after the cause of action accrued. (See C. C. P., Sec. 34. Code of North Carolina, Vol. 1., Sec. 155.)

Although the Statutes of Limitation are in their terms applicable to Courts of law only, nevertheless, Courts of equity, by analogy, act upon them and refuse relief under like circumstances; and in cases, like the present one, where there is a money demand that might be cognizable in a Court of law, Courts of equity act upon such statutes, not so much upon the ground of analogy as positively in obedience to them. Indeed, in the last mentioned

class of cases Courts of equity are bound by Statutes of Limitations like Courts of law.

Story's Eq. Jur., Secs. 64a and 529.
Bank of U. S. *vs.* Daniels, 12 Pet., 32 (12 Cur., p. 618, and see p. 626).
Elmendorf *vs.* Taylor, 10 Wheat, 152 (6 Cur., p. 369, and see p. 367).
Thomas *vs.* Harvie's Heirs, 10 Wheat, 146 (6 Cur., pp. 357 and 358).
Taylor *vs.* Murray, 5 Jones Eq., 357.
Bailey *vs.* Carter, 7 Ire. Eq., 282.

The money demand made by complainants in their bill is therefore barred by lapse of time—the Statute of Limitation.

The complainants allege (Complaint, clause XXV.) that in their suit at law in this Court the defendant company did not at first plead the Statute of Limitation, and that afterwards the Court refused to allow the defendant in that action to put in this plea.

There is no proof in support of this allegation. The transcript of the action at law is not in evidence and does not form a part of the record. If the fact were true it is difficult to see how it can help complainants.

POINT FOURTEENTH.

The complainants, as alleged holders of 140 State bonds, issued under the Act of August 15, 1868, and not returned to the State, did not acquire any lien upon the railroad of the Air Line Company, defendant, and are not on that ground entitled to relief against that company or the Raleigh and Gaston R.R. Co., the owner and holder of a majority of the guaranteed stock of the Air Line Company secured by a first mortgage of its railroad, &c., to Robinson and others, trustees.

I.—The 140 State bonds alleged to be held by the complainants were not put in evidence by them. Their tenor and effect does not appear and the evidence does not show that the State has failed to meet, according to such tenor and effect, its full obligation upon such bonds.

II.—The lien created by the Act of August 15, 1868, was created to secure *payment to the State* of the amount of *the indebtedness due to it* by the Air Line Company, then known as the Chatham Company, and not payment to such persons as might become holders of State bonds agreed by the Act to be issued in aid of the company. The State could, as in fact it did, accept payment from the company in the modes pointed out by the Act of August 15, 1868, creating the lien, and by subsequent acts, and could release the lien while State bonds issued to the company, under the Act of 1868, for the construc-

tion of its road, were in the hands of purchasers outstanding and unpaid.

See Answer of Air Line Co., clauses XXXIV., XXXV., XXXVI. and XLIX., pages 36, 40; Answer of Raleigh and Gaston R.R. Co., pages 42, 43; see Acts relating to issue of bonds in question in Appendix to these Points.

Tennessee Bond cases, 114 U. S., 665.

The bonds to be issued by the State under the Act of August 15, 1868, were to be coupon bonds of the State, pure and simple, *not containing by endorsement or otherwise any obligation whatever on the part of the railroad company.* They were not made payable to the company, but were to go on the market as coupon bonds of the State of North Carolina, and nothing else. The indebtedness of the company to the State for its loan of State bonds was to be evidenced by the bonds of the company deposited with the public treasurer. To secure this indebtedness of the company to the State. the Act of August 15, 1868, provides that "*the State of North Carolina* shall have by this act a lien upon all the estate," &c., which lien shall be more effectually secured by a first mortgage duly executed by said company *to the State.* The Act further provides that in the event of default, "the Board of Internal Improvements *for and in behalf of the State* may enter upon, &c., and dispose of the same by sale, *so as to protect the State.*"

And the Act further provides (section 3) that "the Chatham Railroad Company may at any time before maturity *discharge the bonds of said company* deposited with the public treasurer by substituting in lieu thereof the coupon

bonds of the State, or other indebtedness of the State, or payment in national currency."

The mortgage given by the company *to the State* in pursuance of this Act is Exhibit "C," p. 23.

The Act of April 10, 1869, authorizes the railroad company, for the purpose of completing and equipping its road, to issue bonds and secure them by a mortgage which "*shall have priority over any lien or other claim held by this State* on the subject-matter so conveyed, it being the intent and meaning of this Act that *the State* shall be in the position and have the rights of a second mortgagee, subordinate to the liens created by the mortgage or trust deeds aforesaid."

The Act of December 13, 1871, changes the name of the company from that of the "Chatham Railroad Company" to that of the "Raleigh and Augusta Air Line Railroad Company," and authorizes it to issue a *guaranteed stock* and to secure dividends on the same by mortgage and to borrow money and issue bonds and to pledge the property, &c., of the company for the payment of the same, and provides, with respect to the indebtedness due by the company to the State, as follows:

"SEC. 5. The said Raleigh and Augusta Air Line Railroad Company may, at any time hereafter, discharge the bonds of Chatham Railroad Company, deposited with the public treasurer, in the same manner and not otherwise as the said Chatham Railroad Company is now authorized by law to do, and the public treasurer is hereby directed to return to the said Raleigh and Augusta Air Line Railroad Company the said bonds of said Chatham Railroad Company on payment in the manner above prescribed until the whole amount of said bonds

of the Chatham Railroad Company held by the State shall have been surrendered."

Under the authority of that Act the mortgage or trust deed to Robinson and others, Trustees, to secure the guaranteed stock subscribed for and purchased by the Raleigh and Gaston Railroad Company was made, which mortgage is referred to in the answer, Clause XXXVII., fol. 57, and set forth in the record at page 290.

Under the legislation above recited, it is perfectly evident that the Air Line Railroad Company, when it incurred its debt for the borrowed State bonds, became the debtor of the State and not of the bondholders, and that it was the debt to the State which the State intended to secure with the statutory lien with which it was to be invested and which it alone was to have the power to enforce for its own protection, and which was to be in all other respects subject to its control.

It follows, therefore, under the decision in the *Tennessee bond cases*, that the lien in question "would enure only to the benefit of the State and be subject to the control of the State, without regard to the bondholders" (pp. 689, 690), and that "when provision is made in express terms for a payment to the State, no second payment of the same debt will be presumed to have been in the contemplation of the parties in the absence of some positive requirement to the contrary. The lien must be held to be for the security of the payment which is expressly provided for, and no other" (p. 693), and that "the pledge of State faith for the performance of all State obligations under the Act constituted the only security of the bondholders for the prompt payment of the interest due to them. The liens on the properties of the companies stood only as security for the payment of interest on the bonds to the State" (p. 694).

And the language of the Court at page 704 is precisely applicable to the present case:

"As has been seen, the bonds to be issued were on their face to bind only the State. At that time repudiation of State faith was not thought of. No purchaser of State bonds ever asked whether anything else than the faith of a State was pledged for their payment promptly at maturity. Repudiation was looked upon as dishonorable and as something that would never occur. Security to the State against loss by the loan of its bonds which were provided for must therefore be presumed to have been the sole purpose of the liens which were to be created on the issue of the bonds. Bondholders were never thought of in this connection, for they had the security of the faith of the State and could not have been supposed to look for anything else."

And the present case differs entirely from the *Florida cases*, Railroad Company *v.* Schutte, 103 U. S., 118.

In the *Florida cases* the State issued its bonds to the companies, taking for its indemnity the bonds of the companies and an express statutory mortgage on their property. The State bonds were delivered to the companies and negotiated by them. Each State bond contained this endorsement:

"This bond is one of the series of bonds issued in aid of the Jacksonville Railroad Company to the extent of $16,000 per mile upon completed road, the State of Florida holding the first mortgage bonds of said railroad company for a like amount, as further security to the holders hereof. Signed HARRISON REED,
Governor of Florida."

This endorsement the Court held to be authorized by the statute, and observes as follows:

"Under these circumstances the certificate of the Governor as to the security held by the State is in legal effect the certificate of the company itself, and equivalent to an engagement on the part of the company that the bond, so far as the security is concerned, is the valid obligation of the State."

The Court after entering a *caveat:*

"to guard against the use of this case as authority to others where the contract, even though it be created by statute is not the same," holds that the effect of the statutory contract with the company and the aforesaid endorsement upon bonds received and sold by the company was to create the State a trustee of the company's bonds and mortgage, for the direct benefit of the bondholders of the State. But the Court is careful to observe that the State is such trustee by virtue of an express tripartite contract between it and the company and the State bondholders, and not by virtue of the "doctrine of subrogation."

In other words, there was an express trust created for the direct benefit of the bondholders of the State.

See also Chamberlain *vs.* R. R. Co., 92 U. S., 299.

Murdock *vs.* Woodson, 2 Dillon, 188, 206; 22 Wallace, 351.

VII.—Moreover, a fatal obstacle to the relief sought in this regard exists in the fact that the trustees under the mortgage to secure the guaranteed stock are not made parties to the action. Only a portion of the guaranteed stock is held by the Raleigh & Gaston Railroad. It does not appear by whom the rest is held.

POINT FIFTEENTH.

Complainants are not entitled to relief of any kind because there is a fatal defect of parties in that their co-contractors, Schepeler & Co., are not made parties to the action.

There is neither allegation nor proof that Schepeler & Co. ever parted with their interest or that complainants ever acquired it.

It requires no argument to show that Schepeler & Co. are not merely proper but are *indispensable* parties. A bill to reform a contract of sale and to enforce the contract as reformed cannot be entertained in the absence of the vendors who were and are still parties to and interested in the agreement of sale and its enforcement.

It is more than a question of parties; it is a question of title. The complainants cannot have the contract reformed and enforced and receive the avails for their exclusive benefit without proving title in themselves exclusive of others.

Besides, the contract is an entire subject and from its nature cannot be reformed as respects some of the parties to it and allowed to stand as to the others. It cannot be converted into a contract with the Air Line Company as respects the complainants, Baltzer & Taaks, and remain a contract with Pickrell as respects Schepeler & Co.

Shields *vs.* Barrow, 17 How., 130, 139.
Cameron *vs.* McRoberts, 3 Wheaton, 591.
Mallow *vs.* Hinde, 12 Wheaton, 193.

As was said in *Mallow* vs. *Hinde*, "In this case the complainants have no rights separate and independent of the rights of persons not made parties. The rights of those not before the Court lie at the

very foundation of the claim of right by the plaintiffs and a final decision cannot be made between the parties litigant without directly affecting and prejudicing the rights of others not made parties."

The objection of the want of parties is therefore fatal to granting any relief, although not raised by the pleadings and first taken in this Court, and although on the case made relief should have been granted if the necessary and essential parties had been before the Court.

Story's Equity Pleadings, Sec. 75,
Coiron *vs.* Millaudon, 19 How., 113.
Russell *vs.* Clarke's Executors, 7 Cranch, 67.
Morse *vs.* Co., 42 Me., 119.
Lewis *vs.* Darling, 16 How., 1.

LAST POINT.

The decree appealed from should be affirmed with costs.

EDMUND RANDOLPH ROBINSON,
THOMAS C. FULLER,
Of Counsel.

Appendix to Points.

AN ORDINANCE TO AMEND THE CHARTER OF THE CHATHAM RAILROAD COMPANY.

Passed March 11, 18 8.

SECTION 1. *Be it ordained by the people of North Carolina in Convention assembled*, That to enable the Chatham Railroad Company to finish its road, the Public Treasurer is hereby authorized and directed to deliver to the President and Directors of the said Railroad Company, the coupon bonds of the State, to an amount not exceeding twelve hundred thousand dollars ($1,200,000), signed by the Governor, countersigned by the Public Treasurer and sealed with the Great Seal of the State, bearing six per cent. interest, the principal payable at the end of thirty years from the date thereof, and the coupons of interest payable semi-annually, in such form as the Public Treasurer may direct, to be made payable at such time and place as may be agreed upon by the Public Treasurer.

SEC. 2. *Be it further ordained*, That before the Public Treasurer shall deliver any of said bonds hereby authorized, the said Chatham Railroad Company shall deposit with the Public Treasurer the coupon bonds of said Company for the same amount and bearing the same interest and date, the principal and coupons payable at the same time and place as those of the State hereinbefore directed to be issued and paid over to the Chatham Railroad Company, and to secure the principal and interest of said bonds issued by the Chatham Railroad Company, the State of North Carolina shall by this ordinance have a lien upon all the estate of said company, both real and personal, which they may now have or may hereafter acquire, between the city of Raleigh and the Gulf, the terminus of said railroad,

in the Coalfields, including that at both points, together with all the rights, franchises and powers thereunto belonging or appertaining or that may hereafter belong or appertain to said company, which lien shall be more effectually secured by a first mortgage duly executed by said company to the State, and registered in the Register's office of the counties of Wake and Chatham, and in case of failure of said company to pay the semi-annual interest on its bonds for twenty-four months after such interest shall become due, or to pay the principal of said bonds for twelve months after their maturity, the Board of Internal Improvements for and in behalf of the State may enter upon and take possession of all the property hereinbefore specified, and dispose of the same by sale so as to protect the State.

SEC. 3. *Be it further ordained*, That the Chatham Railroad Company may at any time before maturity take up the bonds of said Company, deposited with the Public Treasurer, by substituting in lieu thereof coupon bonds of the State or other indebtedness of the State.

SEC. 4. *Be it further ordained*, That the State shall have the privilege at any time within eight years from the passage of this ordinance to subscribe stock in said company to the amount of six hundred thousand dollars ($600,000) in shares of one hundred ($100) dollars each, and upon certificate of stock being issued to the State by said company for the same, to surrender the bonds of said company which had previously been delivered to the State under the provisions of this ordinance.

SEC. 5. *Be it further ordained*, That this ordinance shall take effect and be in force from and after its passage.

[*Ratified this* 11*th day of March*, 1868.]

AN ACT TO AMEND THE CHARTER OF THE CHATHAM RAILROAD COMPANY.

Passed August 15, 1868.

SECTION 1. *The General Assembly of North Carolina do enact*, That to enable the Chatham Railroad Company to finish their road, the Public Treasurer is hereby authorized and directed to deliver to the President of the said Railroad Company the coupon bonds of the State, of one thousand dollars ($1,000) each, to an amount not exceeding two million dollars ($2,000,000), signed by the Governor, countersigned by the Public Treasurer, and sealed with the Great Seal of the State, bearing six per cent. interest, the principal payable at the end of thirty years from the date thereof, and the coupons of interest payable semi-annually, in such form as the Public Treasurer may direct, principal and interest payable at such time and place as he may prescribe.

SEC. 2. Before the Public Treasurer shall deliver any of said bonds hereby authorized, the President of said Chatham Railroad Company shall deposit with the Public Treasurer the coupon bonds of the company, signed by him and sealed with the company's seal, for the same amount, and bearing the same interest and date. The principal and coupons, payable at the same time and place, as those of the State, hereinbefore directed to be issued and paid over to the said company, *and to secure the principal and interest of said bonds, issued by the company, the State of North Carolina shall have by this Act a lien upon all the estate of the same, real or personal, which they may now have or may hereafter acquire, between the point of intersection with the Western Railroad and the South Carolina State line*, including that at both points, together with all the rights, franchises and powers thereunto belong-

ing, or that may hereafter belong to said company, in respect of that portion of their line, which lien shall be more effectually *secured by a first mortgage, duly executed by said company to the State, and registered in the Register's office of the County of Wake*, and in the office of the Secretary of State, and in case of the failure of said company to pay the semi-annual interest on their bonds for twenty-four months after such interest shall become due, or to pay the principal of said bonds for twelve months after their maturity, the Board of Internal Improvements, for and in behalf of the State, may enter upon and take possession of all the property hereinbefore specified and dispose of the same by sale, *so as to protect the State.*

SEC. 3. The Chatham Railroad Company may at any time, before maturity, *discharge the bonds of said company, deposited with the Public Treasurer, by substituting in lieu thereof coupon bonds of the State, or other indebtedness of the State*, or payment in national currency.

SEC. 4. That any railroad company within this State shall be at liberty to take or purchase stock in, or lend money to, or purchase bonds of this or any other railroad company in this or any adjoining State.

SEC. 5. This Act shall be in force from and after its ratification.

[*Ratified the 15th day of August*, 1868.]

AN ACT TO RE-ENACT AND CONFIRM CERTAIN ACTS OF THE GENERAL ASSEMBLY, AUTHORIZING THE ISSUE OF STATE BONDS TO, AND FOR CERTAIN RAILROAD COMPANIES.

Passed December 18, 1868.

WHEREAS, Doubts have been raised as to the validity of bonds of the State issued to, and for certain railroad companies, under acts whose titles are hereinafter recited; and *Whereas*, it is the purpose of this General Assembly *to place the validity of such bonds beyond question*, now therefore,

SECTION 1. *The General Assembly of North Carolina do enact*, That an act entitled "An Act to amend the charter of the Williamston and Tarboro Railroad Company," ratified the seventeenth day of August, A. D. eighteen hundred and sixty-eight, and an act entitled "An Act to amend the charter of the Western North Carolina Railroad Company," ratified the nineteenth day of August, A. D. eighteen hundred and sixty-eight, and all the provisions thereof be, and the same are hereby re-enacted, and in all things confirmed, and they are hereby constituted part of this act; and all bonds of the State heretofore made and issued to, and for the railroad companies, and for the purposes in said acts specified, and in pursuance of the same, are hereby ratified and made good to all intents and purposes, as if issued under, and in pursuance of the provisions of this act.

SEC. 2. That on the surrender of any of the bonds heretofore issued under and by virtue of any one of said acts, the Treasurer is hereby authorized and required to issue and substitute new bonds of the State, of like tenor and date, executed in like manner, and in all respects similar, for such bonds so surrendered, except that such new and substituted

bonds shall be issued and purport to be issued under and by virtue of this act, and the bonds so surrendered shall be burnt by the Treasurer in the presence of the Governor and Auditor, who shall cause to be made and sign a certificate, specifying the number and date of such bonds so burnt, and the acts under which the same were issued, and the Treasurer shall report such action and certificate to the General Assembly.

SEC. 3. In order to provide for the payment of the interest that may from time to time accrue upon such bonds, so issued under said acts, and the bonds to be issued and so substituted under this act, there shall be annually levied and collected a special tax of one-thirtieth of one per cent. on the taxable property of the State, to pay the interest that has accrued, and may, from time to time, accrue on the bonds so issued, and so to be issued, to and for the said Williamston and Tarboro Railroad Company, and a like special tax shall be annually levied and collected of one-twentieth of one per cent. on all taxable property of the State, to pay the interest that has accrued and may from time to time accrue on the bonds so issued, and so to be issued to, and for, and on account of the said Western North Carolina Railroad Company.

SEC. 4. The Public Treasurer is hereby directed, whenever the President of the Chatham Railroad Company shall certify that the grading of the road between Cheraw, in South Carolina, and the Gulf, or some other point on the Chatham Railroad, between Raleigh and the Gulf, has been let to contract, to subscribe to the capital stock of said company two million dollars in behalf of the State, which subscription shall be paid by delivering to the President of said company coupon bonds of the State, at par, of the denomination of one thousand dollars, dated October first, eighteen hundred and sixty-

eight, and payable in thirty years thereafter, bearing six per cent. interest, payable semi-annually, principal and interest payable in the City of New York, said bonds to be signed by the Governor, countersigned by the Treasurer, and sealed with the Great Seal of the State, and issued under the provisions of chapter ninety, Revised Code: *Provided, That said bonds shall only be issued on the surrender of a like amount of bonds of the State, heretofore issued under "An Act to amend the charter of the Chatham Railroad Company," ratified fifteenth of August, eighteen hundred and sixty-eight. On which surrender the same amount of bonds delivered by said company to the State under the said act shall be cancelled.* Said subscription shall be preferred stock, and pay a dividend of six per cent. before any dividend shall be declared on the other stock.

SEC. 5. In order to provide for the payment of the interest which may accrue on the bonds issued as above mentioned, there is hereby, and shall be annually, levied and collected, a special tax of one-twentieth of one per cent. on the taxable property of the State, collectable and payable into the Treasury as other public taxes.

SEC. 6. In all meetings of stockholders of said company the State shall, for and in behalf of its stock, be entitled to a vote equal to one-third of that cast by individual stockholders, and all the officers of said company shall be elected by the stockholders as heretofore.

SEC. 7. The capital stock of said Chatham Railroad Company is hereby increased to three million two hundred thousand dollars.

SEC. 8. This Act shall be in force from its ratification.

[*Ratified the* 18*th day of December, A. D.* 1868.]

AN ACT TO ENABLE THE CHATHAM RAILROAD COMPANY TO COMPLETE ITS ROAD.

Passed April 10, 1869.

SECTION 1. *The General Assembly of North Carolina do enact*, That for the purpose of supplying funds to enable the Chatham Railroad Company to complete and equip its road, the said company shall have power to borrow money by the issue of bonds or other evidences of debt, authenticated in such manner as the President and Directors of said company may deem best, in sums not less than five hundred dollars, at a rate of interest not exceeding eight per cent., principal and interest payable at such time and place as said President and Directors may select, the bonds so issued not to exceed two millions of dollars.

SEC. 2. To secure the payment of these bonds and other evidences of debt issued as aforesaid, and the interest thereon, the said Chatham Railroad Company may execute and deliver mortgage deeds or deeds in trust, signed by the President and countersigned by the Secretary of said company, conveying its franchise and property, including its road-bed, superstructure, choses in action, and real and personal estate of whatever kind, to the holder of said bonds, or to such parties as said President and Directors may select in trust for them, and the deeds so executed and registered in the county of Wake shall *have priority over any lien or other claim held by this State, on the subject matter so conveyed, it being the intent and meaning of this act that the State shall be in the position and have the rights of a second mortgage, subordinate to the liens created by the mortgage or trust deeds aforesaid;* that before the said Chatham Railroad Company shall make or sell any portion of the first mort-

gage bonds authorized by sections one and two of this act they shall deliver to the Public Treasurer a second mortgage upon all their estate, both real and personal, which they may now have, or may hereafter acquire, between the City of Raleigh and the terminus of said railroad to the South Carolina line at or near Cheraw, S. C., said second mortgage bonds to be in all other respects the same as the first mortgage bonds now held by the State, bearing the same interest and payable in the same manner; and the President of the said Chatham Railroad Company shall also deposit with the Public Treasurer the sum of one hundred and forty-four thousand dollars of first mortgage bonds, to be applied to the payment of the interest on the second mortgage bonds.

SEC. 3. Any county along the line of the said Chatham Railroad may subscribe to the capital stock of the company to such an amount as the majority of the commissioners of said county may determine, subject to the approval of a majority of the qualified voters of the county. And said commissioners, in order to pay the said subscription, shall have power to issue bonds or other evidences of debt at a rate of interest not to exceed eight per cent. per annum; said bonds to be issued in such manner and form, payable at such time and place, and authenticated in such manner as they may determine.

SEC. 4. In order to pay the principal and interest of the bonds issued as aforesaid, the commissioners of the county subscribing as above mentioned shall levy and collect annually in such manner as is directed by law in case of taxes for other county purposes a tax sufficient to pay the annual interest, and they may levy and collect a further tax to be used in extinguishment of the principal, or else to be

invested as a sinking fund for the ultimate redemption of the principal.

SEC. 5. No subscription shall be made by the commissioners of any county as above mentioned until the question of approval or disapproval of such subscription, the issue of bonds or other evidence of debt, and the authority to levy taxes to pay the interest and provide for payment of the principal of the bonds shall be submitted to the qualified voters of the county, and shall be approved by a majority of those voting. The election shall be held at the usual places of voting. Thirty days' notice shall be given by advertisment in at least two newspapers published in the county, if there be any, at the court house door and at each of said election precincts. If there be no newspapers published in the county, then the advertisement shall be published in some newspaper having, in the opinion of the commissioners, the widest circulation in the county. The advertisement shall contain a copy of this act, as well as the amount proposed to be subscribed by the commissioners and the amount of bonds or other evidences of debt proposed to be issued. Those approving the proposition shall deposit in the ballot-box ballots with the printed or written word "approved," those disapproving the same shall deposit ballots with written or printed words "not approved," and if a majority of said voters shall vote "approved," they shall be deemed to ratify and approve the subscription and debt proposed to be made and the tax proposed to be levied.

SEC. 6. The commissioners of any county proposing to subscribe for stock as aforesaid, shall have authority to take all measures consistent with this act and the laws of the State for registration of voters, holding the election and returns of the

result of the same and if said subscription be approved they shall have power to take all measures proper for carrying the same into effect.

SEC. 7. The Chatham Railroad Company shall have power to receive subscriptions to its capital stock, payable in real or personal property at such valuation as may be agreed on between the company and the subscriber. It shall not be necessary for the wife to join her husband in the conveyance of any right of way or other interest in real estate of the husband, for any puprose, to said company, in order to pass her right of dower, or other marital right therein.

SEC. 8. The said company shall have power to take all such securities and mortgages of real and personal estate, as it may deem proper to secure the faithful performance of contracts for the construction and repair of said road, and the buildings and other things incident thereto.

[*Ratified the* 10*th day of April, A. D.* 1869.]

AN ACT CONCERNING THE CHATHAM RAILROAD, AMENDATORY OF CERTAIN ACTS AND AUTHORIZING A CHANGE OF NAME.

Passed December 13, 1871.

SECTION 1. *The General Assembly of North Carolina do enact*, That the Chatham Railroad Company shall hereafter be known by the corporate name of the "Raleigh and Augusta Air Line Railroad Company."

SEC. 2. That it shall be lawful for the said railroad company to change the line of its road as heretofore prescribed, so as to extend it from its present terminus or such point on the line of the same as it may deem advisable, to such point on the South Carolina line in the direction of Augusta, in the State of Georgia, as the said company may deem most eligible, and as much farther as may be authorized by the States of South Carolina and Georgia, and to locate and construct such branch road or roads, not exceeding in length, from the line of said railroad as may be authorized from time to time by the stockholders, and in building and the use of such branch railroads the said company shall have all the rights, privileges and immunities granted to it by the act to incorporate the Chatham Railroad Company, and other acts amendatory and supplementary to the same and of this act.

SEC. 3. If the capital stock of the said company now authorized shall be deemed insufficient for the purposes of this act it shall and may be lawful for the company in general meeting from time to time to increase the same by the addition of as many shares as they may deem requisite, and the Board of Directors, with the consent of a majority of the votes of all the stockholders in general meeting,

may make such portion of the capital stock already authorized, or of any additions to the same, as they may deem advisable, a guaranteed or preferred stock, upon which guaranteed or preferred stock such interest or dividends may be guaranteed as the directors may deem advisable; and the directors may, with the consent of a majority of the votes of all the stockholders in general meeting, secure such guaranteed interest or dividends by liens or mortgages upon all the property and franchise and income of the company, or upon any portion thereof, and the directors may, in their discretion, authorize subscriptions to be received for such additional stock (either common or guaranteed, or both), at such prices and in such manner as may be prescribed by them, and may sell the same or any part thereof for the benefit of the company: *Provided*, That the entire capital stock so created shall not exceed five millions of dollars. And the said board of directors, with the consent of a majority of the votes of all the stockholders, shall have power to borrow money for the purposes of the railroad authorized by this act; and for loans made by them to issue bonds with or without the privilege of conversion into stock in such amounts, and payable at such times and places, and at such rates of interest, as they may determine, and to pledge the property and franchises and income of the company, or any portion thereof, by mortgage or otherwise for the payment of the principal of the same and the interest that may accrue thereon.

SEC. 4. Authority is hereby given to the Raleigh and Gaston Railroad Company, or any other railroad company connecting therewith, to subscribe to or purchase stock of any kind of the said Raleigh and Augusta Air-Line Railroad Company, and in order to enable them to make such subscription or purchase, it shall be lawful for any such company to issue mortgage bonds for such amount and of

such form, and of such rate of interest as it may deem advisable; and it shall be lawful for any such company to purchase or endorse the mortgage bonds of the Raleigh and Augusta Air-Line Railroad Company.

SEC. 5. The said Raleigh and Augusta Air-Line Railroad Company may, at any time hereafter, discharge the bonds of Chatham Railroad Company, *deposited with the Public Treasurer, in the same manner and not otherwise as the said Chatham Railroad Company is now authorized by law to do*, and the Public Treasurer is hereby directed to return to the said Raleigh and Augusta Air-Line Railroad Company the said bonds of said Chatham Railroad Company *on payment in the manner above prescribed*, until the whole amount of said bonds of the Chatham Railroad Company, *held by the State*, shall have been surrendered.

SEC. 6. All acts and parts of acts heretofore passed, inconsistent with this act, are hereby repealed.

SEC. 7. This act shall be in force from and after its ratification.

[*Ratified the 13th day of December, A. D.* 1871.]